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Nos. 94-1614, 94-1631 and 94-1985

In the Supreme Court of the United States

OCTOBER TERM, 1995

Supreme Court, U.S.
FILED
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CLERK

STATE OF WISCONSIN, PETITIONER

v.

CITY OF NEW YORK, ET AL.

[Caption Continued on Inside Cover]

On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari in No. 94-1614 Filed April 3, 1995
Petition for Writ of Certiorari in No. 94-1631 Filed April 4, 1995
Petition for Writ of Certiorari in No. 94-1985 Filed June 5, 1995
Certiorari Granted September 27, 1995

STATE OF OKLAHOMA, PETITIONER

v.

CITY OF NEW YORK, ET AL.

UNITED STATES DEPARTMENT OF COMMERCE, ET AL., PETITIONERS

v.

CITY OF NEW YORK, ET AL.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Docket No. 88-3474

THE CITY OF NEW YORK, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF COMMERCE, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
1988		
11/3	1	Complaint filed, summons issued. (ent. 11-7-88) LCJ
11/3	2	Pltffs NOTICE OF MOTION returnable 11-17-88 at 9:30 A.M. For a Preliminary Injunction pursuant to Rule 65. (ent. 11-7-88) LCJ (attached exhibits) LCJ
11/3	3	Pltffs MEMORANDUM OF LAW IN SUPPORT OF THE MOTION FOR PRELIMINARY INJUNCTION. (ent. 11-7-88) LCJ
11/3	4, 5 & 6	VOLUMES 1 thru 3. Exhibits In Support Of Pltffs Motion For A Preliminary Injunction, (ent. 11-7-88) LCJ
		• • • •
12/14	10	AMENDED COMPLAINT filed. 12-15-88rc
12/16	11	DEFT'S NOTICE OF MOTION ret. 12-29-88 (U.S. Dept. of Commerce, Bureau of the Census, C. William Verity, Robert Ortner and John G. Keane) for an order to stay discovery or for summary judgment. 12-19-88rc

DATE	NR.	PROCEEDINGS
1988		
12/16	12	DEFT'S NOTICE OF MOTION to dismiss action for want of jurisdiction filed. 12-19-88rc
12/16	13	DEFT'S, U.S. Dept. of Commerce, Bureau of the Census, C. William Verity, Roberr [*sic*] Ortner and John Keanes' NOTICE OF MOTION ret. 1/11/89 to dismiss complaint or to grant deft's summary judgment pursuant to Fed. R. Civ. P. 56. 12-19-88rc
12/16	14	Deft's Statement of Material Facts as to Which There is No Genuine Issue filed. 12-19-88rc
12/16	15	Deft's MEMORANDUM OF LAW In Support of Motion to Dismiss or for Summary Judgment and in Opossition [*sic*] to Pltff's Motion for Preliminary Injunction. 12-19-88rc
		* * * *
1/13	23	Statement Pursuant to Local Rule 3(g) in Opposition to Deft's motion to Dismiss. 1/13/89rc
		* * * *
1/13	25	Memorandum of Law in Support of Opposition to Deft's Motion for Summary Judgement. 1/13/89rc
		* * * *
1989		
1/26	28	Deft's Reply Memorandum in further Support of deft's motion for dismissal or for s/j. 1/27/89
		* * * *
2/14	30	STIPULATION by McLaughlin, J. dated 2/9/89 Regarding Participation of Donald K. Anderson. (see order for mor [*sic*] detail). 2/14/89rc

DATE	NR.	PROCEEDINGS
1989		
2/15	31	ORDER by McLaughlin, J. dtd 2/10/89. re: Deft's motion for an order dismissing the complaint. The Court is compelled to conclude that it must exercise its discretion and "require pltff(s) to supply by affidavits, further particularized allegations of fact deemed supportive (pltff's) standing. It is hereby ORDERED that pltffs submit on or before 2/24/89 affidavits or other competent evidence that support their allegations of fact on this issue of standing. The clerk shall make copies and serve them upon the parties. 2/15/89rc
		* * * *
3/10	39	Affidavits in Response to Court's 2/10/89 Order on the Issue of Standing. 3/13/89rc
3/10	40	Pltff's Memorandum in Response to the Court's Order of 2/10/89 on the Issue of Standing. 3/13/89rc
		* * * *
3/21	44	Affidavit in Response to Court's February 10, 1989 Order on the issue of Standing. 3/21/89rc
3/28	45	Deft's Memorandum in Response to Pltff's Memorandum in Response to Court's Order 2/10/89 on standing. 3/28/89rc
5/31	46	Plaintiffs Reply Memo in response to the Court's Order dtd 2/10/89 on the issue of standing, filed. (ent'd 4/489) mji
		* * * *

DATE	NR.	PROCEEDINGS
1989		
4/27	50	MEMORANDUM & ORDER dtd 4/21/89 by McLaughlin, J. denying deft's motion to dismiss the complaint and denying motion for summary judgment. Pltff's may renew motion for preliminary injunction upon the completion of discovery. c/m 4/27/89rc
		* * * *
4/21	—	Before McLaughlin, J. case called for motion. All present. Mr. Harte is admitted pro hac vice. Det. motion to dismiss argued. decision entered on the record. Motion denied. Defts motion for summary judgment denied. Pltffs to renew motion for preliminary injunction upon completion of discovery. 5/10/89rc
		* * * *
5/16	54	ANSWER filed. 5/17/89rc
		* * * *
6/7	64	STIPULATION/ORDER dtd 6/6/89 by McLaughlin, J. The return date for defts' motion for reconsideration is moved to 7/7/89; pltffs' memorandum in opposition to defts' motion for reconsideration shall be served on 6/23/89; and defts; reply memorandum in support of their motion for reconsideration shall be served on 7/6/89. 6/8/89rc
		* * * *
6/28	82	STANDARD REFERRAL ORDER dated 6/21/89 by McLaughlin, J. referring case to MAG. CADEN for all purposes and to hear and decide defts' motion (1) to strike witnesses from pltffs' witness list and (2) to compel interrogatory answers; and (3) to quash subpoenas. 6/28/89rc
		* * * *

DATE	NR.	PROCEEDINGS
1989		
7/18	98	STIPULATION AND ORDER by J. McLaughlin dtd 7/17/89 re: all pending motions, including pltff's pending Motion for a Preliminary Injunction, are withdrawn. (Ent'd 7/18/89) mr
7/17	—	Before J. McLaughlin—Case called. Counsel for both sides present. Pltff's motion for preliminary injunction is withdrawn. Stipulations placed on the record. Permanent injunction motion is still pending but should be resolved. (ent'd 7-20-89) nm
		* * * *
1990		
4/11	104	Pltff, THE CITY OF NEW YORK, NOTICE OF MOTION ret. 4-26-90 for an order, for a declaratory judgment and other relief. 4-11-90rc
		* * * *
4/11	108	Memorandum of Law in Support of pltff's Motion for a Supplemental Order to Enforce the Court's 7-17-89 order and for Declaratory Judgment. 4-11-90rc
4/19	109	NOTICE OF MOTION by State of Texas to Intervene as Pltff. 4-20-90rc
4/19	110	Memorandum in Support of Texas' Motion to Intervene. 4-20-90rc
		* * * *
5/4	112	Defts' Opposition to Pltff's Motion for A supplemental Order to Enforce Court's 7-17-89 Order and or Declaratory Judgment filed. Notice of Filing and Administrative Records Volums IA, IB, IC, ID, IIA, IIB attached. 5-4-90rc
		* * * *

DATE	NR.	PROCEEDINGS
1990		
5/24	122	the City of Pheonix's MOTION TO INTERVENE & REQUEST FOR ORAL ARGUMENT. 5-25-90RC
5/24	123	The City of Pheonix's Memorandum In Support of Its Motion to Intervene. 5-25-90rc
		* * * *
6/7	127	Supplemental Stipulation and Order dtd 6-5-90 by McLaughlin, J., amending the Stipulation and Order of 7/17/90 (see stipulation for further details). 6-7-90rc
6/8	128	MEMORANDUM & ORDER dtd 6-7-90 by McLaughlin, J., that the motion for declaratory judgment is hereby granted with the understanding that statutory and constitutional concerns will remain relevant in regard to the final form of statistical adjustment. The motion for a supplemental order is granted in part and denied in part, as set forth herein (see memo & order for further details). 6-11-90rc
		* * * *
7/13	130	ORDER dtd 7-13-90 by McLaughlin, J., granting motion to intervene. (see 5-24-90) With no further outstanding motions in this case, the federal file on this matter will, again be administratively closed. C/m 7-16-90rc
		* * * *
7/20	132	TEXAS' COMPLAINT IN INTERVENTION filed. 7-20-90rc
		* * * *
1991		
3/20	138	Letter dtd 3-13-91 from Michael S. Bokar, Senior Deputy Atty General for the State of

DATE	NR.	PROCEEDINGS
1991		
		New Jersey, confirming that the State of New Jersey agrees to be bound by the strip & Order of this Court dtd 7-17-89, filed. eod-3-20-91 el
2/15	139	Notice of motion by the state of New Jersey to intervene as a plaintiff filed. eod-4-8-91 el
2/15	140	Memo of law in support of motion to intervene, filed. eod-4-8-91 el
4/3	141	The cities of Cleveland, Denver, Inglewood, Ca., New Orleans, Oakland, Pasadena, Philadelphia, San Antonio, San Francisco and Broward County Florida's motion to intervene as pltffs in this action, ret. 4-18-91 filed. eod-4-8-91 el
4/3	142	Affidavit of Robert Rifkind in support of motion to intervene on behalf of Cleveland, etc., filed. eod-4-8-91 el
4/3	143	Affidavits in support of motion to intervene, filed. eod-4-8-91 el
4/3	144	Memo of law in support of motion to intervene, filed. eod-4-8-91 el
4/8	145	BY MCLAUGHLIN, J—Order dtd 3-28-91 granting the State of New Jersey's motion to intervene, filed. c/m. eod-4-8-91 el
4/8	146	Complaint in intervention of State of New Jersey, filed. eod-4-8-91 el
		* * * *
4/30	151	BY MCLAUGHLIN J.—Order dtd 4-26-91 (and received in the District Court today), that pursuant to the Court's order of 7-13-90, the motion of the City of Cleveland, Ohio, et al to intervene is hereby granted, filed. cm eod-4-30-91 el
		* * * *

DATE	NR.	PROCEEDINGS
1991		
5/28	155	Notice of motion by state of Florida to intervene as pltff, filed. el
5/28	156	Memo of law in support of motion to intervene, filed. el
		* * * *
6/19	161	BY MCLAUGHLIN C.J.—Order dtd 6-18-91 that pursuant to the Court's order dtd 7-13-90, the motion by the State of Florida to intervene is granted, filed. cm el
		* * * *
7/17	165	The State of Wisconsin's notice of motion and motion to intervene as a deft filed. el
7/17	166	Memo in support of Wisconsin's motion to intervene, filed. Both doc. 165 & 166 sent to chambers. el-
		* * * *
7/29	173	State of Washington's motion to appear amicus, filed. el
7/29	174	Memo in support of motion to appear amicus curiae, filed. el
		* * * *
8/8	177	Defts' motion ret. 8-22-91 for an order of dismissal. ent 8/23 mg (Memo of Law in support attached)
		* * * *
8/19	179	Motion by the State of Arizona to intervene as a party pltff with memo in support attached. ent 8-23 mg
8/19	180	Defts' motion to strike notices of depositions of Robert A. Mosbacher; Michael Darby; and Barbara E. Bryant ret 8/27/91. ent 8-23 mg
		* * * *

DATE	NR.	PROCEEDINGS
1991		
8/20	184	Pltff's memo in opposition to defts' motion to dismiss. ent 8-23 mg
8/22	185	Motion by the cities of Long Beach, Ca.; SanJose, Ca.; Baltimore, Md.; Boston, Ma.; Counties of Los Angeles and San Bernardino, Ca.; the District of Columbia; and the Navajo Nation ret 9/6/91 for an order permitting intervention as pltffs. ent 8-23 mg
		* * * *
9/3	203	Certified copy of MANDATE FROM USCA issued 8/29/91. Petition for Writ of Mandamus is denied without prejudice to renewal after the District Court rules on an application for a protective order, petitioners have one week from the date hereof for a stay of deposition-pending a decision on a motion to be filed forthwith for a protective order. Depositions are stayed for the period (up to 1 week) until petitioners apply to the District Court for a stay of deposition. Judge notified. USCA #91-3045. (EOD 9/4/91) mamc
9/3	204	Certified copy of MANDATE FROM USCA issued 8/28/91. Motion for stay pending disposition of petition for Writ of Mandamus is considered to be moot in light of this Court order of 8/28/91. Judge notified USCA #91-3045. (EOD 9/4/91) mamc
9/17	205	By Judge McLaughlin dated 8/1/91, ordered, that this case be referred to Mag. Ross for all pretrial purposes; to hear and decide discovery disputes. ent. 9/17/91 sy
9/17	206	By Judge McLaughlin dated 9/3/91, ordered, that Arizona motion to intervene as a plaintiff is granted. ent 9/17/91 sy

DATE	NR.	PROCEEDINGS
1991		
9/17	207	By Judge McLaughlin dated 9/3/91, ordered, that the City of Baltimore; Boston; Long Beach; San Jose; Los Angeles; San Bernardino; the District of Columbia; and the Navajo Nation motion to intervene as plaintiffs is granted. ent 9/17/91 sy
		* * * *
9/9	209	Notice of motion by state of New Mexico to intervene as a plaintiff. ent 9/17/91 sy
9/9	210	Memorandum of law in support of motion to intervene by state of New Mexico. ent 9/17/91 sy
		* * * *
9/17	213	By Judge McLaughlin dated 9/10/91, ordered, that the State of Wisconsin motion to intervene as defendant is granted. ent 9/17/91 sy
9/16	214	Copy of order by Mag. Ross dated 9/16/91, that defendants' motion for a protective order is granted only insofar as it seeks to preclude the depositions of Secretary Mosbacher, Under Secretary Darby and Director Bryant. ent 9/17/91 sy
		* * * *
9/22	217	Federal defendants' memorandum on adjusted population estimates. ent 9/23/91 sy Attached with the letter dated 9/20/91 from Thomas Millet to Judge McLaughlin.
		* * * *
9/23	221	By Judge McLaughlin dated 9/19/91, ordered, that the defendants' motion to dismiss is DENIED. ent 9/23/91 sy

DATE	NR.	PROCEEDINGS
1991		
9/23	222	By Judge McLaughlin dated 9/23/91, ORDERED, that defts' motion to move forthwith before the second circuit for a stay of depositions is GRANTED. ent 9/26/91 sy
9/24	223	ORDERED by Judge McLaughlin dated 9/24/91 that the state of New Mexico's motion to intervene as a plaintiff is GRANTED; and also GRANTED New Mexico's motion to appear pro hac vice. ent'd 10/8/91 sy
		* * * *
10/24	225	CERTIFIED COPY OF MANDATE from the USCA DENYING the Writ of Mandamus. Issued as mandate on 10-22-91. Ackn mailed. Judge notified. USCA # 91-3047. (EOD 10-24-91) mcg
10/10	226	ORDERED, by Mag. Ross dated 10/10/91 that plaintiff should be given access to the corrected redistricting tapes. ent'd 10/24 sy
10/15	227	City of Tucson's complaint in intervention filed. ent'd 10/24 sy
10/15	228	City of Tucson's memorandum in support of its motion to intervene filed. ent'd 10/24/91 sy
10/15	229	City of Tucson's motion to intervene and notice of motion filed ent'd 10/24/91 sy
		* * * *
10/23	233	Motion by State of Oklahoma to intervene as a defendant. ent'd 10/24 sy
10/23	234	Memorandum in support of motion to intervene by the State of Oklahoma. ent'd 10/24 sy

DATE	NR.	PROCEEDINGS
1991		
10/25	235	AN ORDER from USCA DENYING the governments motion for Stay of Depositions Pending Disposition for Petition for Writ of Certiorari filed at the USCA on 10-23-91. Judge notified. Ackn mailed. (EOD 10-25-91) mcg
		* * * *
11/14	254	Before Mag. Ross on 11/14 at 4:30. (1) Briefing schedule on motion for Mosbacher Dep: answer on 11/19; reply on 11/21. (2) Briefing schedule on motion to compel responses to questions concerning compilation of administrative record: answer by 11/22; reply by 11/2 (3) Parties meeting to negotiate defts' "contention interrogatories" (4) By 11/19, if possible, defts' to submit appropriate evidentiary basis for assertion of attorney/cient privilege in connection with 7/2/91 meeting; (5) Sear deposition may proceed, depending upon witness's availability, to be determined by deft's counsel.
11/15	255	Before Mag. Ross on 11/15 at 5:00, ORDERED, that plaintiffs' deposit of Fr. Wilkie may proceed, with its scope to be limited to the following issues: —any possible White House involvement with the adjustment decision and communications between the Dept. of Commerce and the White House or White House counsel on that issue; —Fr. Wilkie possible authorship of the Qs and As about which Dr. Plant was questioned; and—foundational questions concerning defts' assertion of the attorney-client privilege with respect to the 7/2/91 meeting. ent'd 11/18 smy

DATE	NR.	PROCEEDINGS
1991		
11/15	256	ORDERED, by Mag. Ross dated 11/15: As Judge McLaughlin previously rules, the issue of possible interference in the adjustment decision is an appropriate one for discovery at this stage of the case. The record developed during the Swanson deposition—both by Fr. Wilkie's testimony & by certain of the documents produce—clearly establish that Fr. Wilkie has personal knowledge on this issue having communicated concerning it not only with Swanson but also with Deputy White House Counsel John Schoritz and W.H. Counsel Boyden Grey. That, as defts point out, Fr. Willkie's communications on this issue were occasioned by the performance of his duties does not detruct from the appropriateness of discovery concerning those communications. Thus the evidence of Fr. Willkie's personal knowledge of this issue comply with the significance and appropriateness of the issue for exploration at this stage of the proceeding and the clear waiver of any privilege with regard to these particular communications (that is, between W.H. and commerce dept personnel concerning the adjustment issue) establish adequate necessity for his deposition on this limited issue, notwithstanding his senior position at the commerce dept. On the other hand, pltfs' have not established it. (See file) smy
		• • • •
11/25	264	Notice of MOTION by County of Hudson to intervene as plaintiff, returnable on 12/13/91 at 9:30. ent'd 11/27 smy (Attached mem. in support and aff. of Lawrence Berman)
		• • • •

DATE	NR.	PROCEEDINGS
1991		
11/26	266	Memorandum and ORDER by Mag. Ross dated 11/26/91, that the request for the deposition of Robert Mosbacher is DENIED. smy
11/26	267	Notice of appeal by deft of Mag. Ross's order of 11/15/91 filed, ent'd 12/3/91 smy
		* * * *
12/5	274A	Ordered, by Judge McLaughlin dtd 12/3/91, granting motion by Los Angeles to appear pro hac vice. ent'd 12/6 sy
		* * * *
12/5	275A	Ordered, by Judge McLaughlin dtd 12/3/91, that city of Tucson, Arizona motion to intervene as a plaintiff and to appear pro hac vice is granted. ent'd 12/6 sy
		* * * *
12/5	276A	Ordered, by Judge McLaughlin dtd 12/3/91, that the state of Oklahoma's motion to intervene as a deft is granted. ent'd 12/6 sy
1992		
		* * * *
1/21	282	Ordered, by Judge McLaughlin dtd 1/21/92, that the motion by County of Hudson, New Jersey to intervene as a plaintiff is granted. ent'd 1/24/92 sy
		* * * *
2/11	——	Administrative record received from Judry Subar with cover letter dtd 2/6/92 (in boxes) ent'd 2/11/92 sy
2/18	285	Order, by Judge McLaughlin dtd 2/18/92, that this Court will conduct an evidentiary hearing. ent'd 2/20/92 sy c/m

DATE	NR.	PROCEEDINGS
1992		
2/19	286	Before Judge McLaughlin on 2/19/92 for conference. Case called. All counsel present. Conf. held. Deposition's to completed by 4/24/92. Next conf. set for 2/21/92 at 11:00 by phone. Trial set for 5/11/92. Plaintiffs' witness list served by 3/2/92. Dft's witness list served by 3/9/92. Dft intervenor Wisconsin will serve pre-trial brief on question of legality of an adjustment. ent'd 2/28/92 sy
2/21	287	Before Judge McLaughlin on 2/21/92 for conf. by phone. Case called. Plaintiff's response to summary judgment motion of dfts due no later than 5/1/92. Pretrial submissions (due 5/1/92) limited to (1) pre-trial briefs, (2) documents categorized and marked by witness, (3) expert C.V.'s. Scope of trial will be broad; plaintiffs must prove abuse discretion. Dfts to respond to plaintiffs' evidence as they see fit. ent'd 2/28/92 sy
		• • • •
3/19	292	ORDER, by Judge McLaughlin dtd 3/16/92, that the request for State of Washington to appear as *amicus curiae* is granted to the limited extent that Washington may interpose an amicus brief re dfts' presently outstanding motion for summary judgment. The brief is to be filed no later than 4/6/92. The State of Washington may also interpose a pre-trial brief no later than 5/1/92 en'td 3/19 sy
3/19	293	Notice of Filing by dtfts re: recent decision by the U.S. Court of Appeals for the 7th Circuit. ent'd 3/24 sy
		• • • •

DATE	NR.	PROCEEDINGS
1992		
3/30	300	Answer in intervention of the State of Oklahoma, Ex Rel. Susan Loving, attorney general of Oklahoma to amended complaint. (rnt'd 3/30/92) sy
3/31	301	Memorndum of Law in SUPPORT of plaintiffs' Motion In Limine filed. (ent'd 3/31/92) sy Exhibits A-J attached.
3/31	302	Plaintiffs' notice of MOTION in limine for an order precludindg dfts from offering at trial evidence created after 7/15/91. (ent'd 4/1/92) sy
4/2	303	Plaintiffs' amended notice of motion in limine filed. (ent'd 4/3/92) sy
		* * * *
4/9	308	ORDER by Judge McLaughlin dtd 4/7/92, that the dft's motion in limine to preclude the trial testimony of Robert Mosbacher is *granted.* With one limitation, if, during the course of the hearing, the plaintiff can make a showing of bad faith sufficient to warrant the introduction of Mr. Mosbacher's testimony, they may, at that time, seek a reconsideration of this order. c/m (ent'd 4/9/92) sy
4/15	309	ORDER by Judge McLaughlin dtd 4/9/92, that the dfts' request for reconsideration of their motion to dismiss is DENIED. c/m (ent'd 4/15/92) sy
		* * * *
4/27	317	Motion by the Council of the Great City Schools to intervene as plaintiff. Motion returnable on 5/11/92 at 9:30. (ent'd 4/28/92) sy

DATE	NR.	PROCEEDINGS
1992		
4/27	318	Memorandum in support of motion to intervene filed by The Council of the Great City Schools. (ent'd 4/28/92) sy
		* * * *
4/30	321	Notice of joinder in opening trial memorandum and support of arguments presented by plaintiff City of N.Y. filed. (ent'd 5/4/92) sy
		* * * *
5/1	323	Order by Judge McLaughlin dtd 4/27/92, summarizing the Court orders that : (1) the plaintiffs' motion to preclude the dfts from introducing at trial documents created after July 15, 91 is DENIED; (2) the plaintiffs' motion for reconsideration of the Court's order of 3/24/92 is DENIED; and (3) *Florida House of Representatives v. Mosbacher* is hereby consolidated with this action. (ent'd 5/4/92) sy C/S
		* * * *
5/4	325	Trial brief of dft-intervenor The State of Oklahoma filed. (ent'd 5/4/92) sy
		* * * *
5/4	327	Plaintiffs' trial brief filed. (ent'd 5/5/92) sy
5/4	328	Plaintiffs' statement pursuant to rule 3(g) filed. (ent'd 5/5/92) sy
5/5	329	Dfts' trial brief filed. (ent'd 5/5/92) sy
5/5	330	Brief of dft-intervenor State of Wisconsin in opposition to statistical adjustment of the 1990 decennial census filed. (ent'd 5/5/92) sy
		* * * *
5/11	332	Ordered, by Judge McLaughlin dtd 5/6/92, consolidating case 88-cv-3474 and 92-cv-1566. Copies mailed. (ent'd 5/11/92) sy

DATE	NR.	PROCEEDINGS
1992		
5/11	333	Ordered, by Judge McLaughlin dtd 5/8/92, that the dfts' motion for summary judgment is denied. C/m (ent'd 5/11/92) sy
		* * * *
5/18	335	Order, by Judge McLaughlin dtd 5/12/92, that the Council of the Great City Schools' motion to intervene as a plaintiff is *granted*. C/M (ent'd 5/19/92) sy
5/19	336	Notice of adoption of plaintiffs' trial brief filed. (ent'd 5/19/92) sy
		* * * *
7/2	342	Dfts' proposed findings of fact and conclusion of law filed. (ent'd 7/2/92) sy
7/2	343	Dfts' post-trial brief filed. (ent'd 7/2/92) sy
7/3	344	Plaintiffs' proposed findings of fact and conclusion of law filed. (ent'd 7/7/92) sy
7/3	345	Plaintiffs' post-trial brief filed. (ent'd 7/7/92) sy
7/3	346	State of California's post-trial statements filed. (ent'd 7/7/92) sy
7/14	347	Dft-intervenor State of Oklahoma's *post-trial statement* filed. (ent'd 7/14/92) sy
7/30	348	Plaintiff County of Hudson's proposed findings of fact and conclusion of law filed. (ent'd 7/30/92) sy
7/30	349	Plaintiff Hudson County's post trial brief filed. (ent'd 7/30/92) sy
7/30	350	Dft's REPLY to plaintiff's post trial brief filed. (ent'd 7/30/92) sy
7/30	351	Plaintiffs' Post-trial reply brief filed. (ent'd 7/31/92) sy

DATE	NR.	PROCEEDINGS
1992		
7/31	352	Order by Judge McLaughlin dtd 7/20/92: (1) that the letters from both sides expanding upon and explaining certain representations made by defense counsel at trial are admitted; (2) PX 836, 649, 652, 780 are admitted; (3) PX 781 is admitted; (4) PX 782 & 783 are admitted; and (5) the depositions and deposition exhibit designations submitted by the parties are admitted with the exception of the Verity testimony discussed. So. Ordered. (entered 7/31/92) sy c/m
		* * * *
8/18	355	Letter dtd 8/17/92 from Michael Sitcov to Judge McLaughlin enclosing a copy of the recent decision in *City of Detroit, et al. v. Franklin, et al.* (Copy attached) (ent'd 8/20/92) sy
		* * * *
1991		
11/25	368	Complaint in intervention of County of Hudson filed. (ent'd 8/21/92) sy
2/7	369	Notice of Motion by dfts for summary judgment. Motion returnable on 3/27/92 at 9:30. (ent'd 8/21/92) sy
2/7	370	Memorandum of points and authorities in support of dfts' motion for summary judgment. (ent'd 8/21/92) sy
		* * * *
1993		
4/13	364	By Judge Joseph M. McLaughlin, dated April 13, 1993, MEMORANDUM & ORDER finding that the Secretary's decision not to adjust the 1990 census does not violate the APA, the

DATE	NR.	PROCEEDINGS
1993		
		Constitution, the Stipulation, or any statute; and the Court vacates the protective order governing the pltfs.' use of the computer tapes containing the adjusted block-level counts. The Court on the record before it, supplant the Secretary's decision. c/m (Entered on docket on 4/13/93) . . . tv
5/4	375	JUDGMENT: that the Court finds that the Secretary's decision not to adjust the 1990 census does not violate the APA, the Constitution, the Stipulation, or any statute; and, that the protective order governing the plaintiffs' use of the computer tapes containing the adjusted block-level counts is vacated. (Signed by Clerk of Court, Robert Heinemann, dated 5/3/93) ent'd 5/4/93) sy
		Case Closed.
7/6	376	NOTICE of Appeal filed by Plaintiffs/Appellants from the Judgment entered on 5/4/93. C of A filing fee paid/receipt #153080. AFF of service attached. C of A notified. (EOD 7/6/93) mcg
8/6	377	SCHEDULING ORDER from USCA filed. Record due 8/27/93. Appellant's brief due 9/3/93. Brief of Appellees due 10/4/93. Argument of the appeal to be heard 10/25/93. USCA #93-6183. mam
		* * * *
9/17		RECORD CERTIFIED & sent to the USCA. Ackn requested. (EOD 9/17/93) mcg
		* * * *
9/22	——	CERTIFIED & Send to the USCA a copy of (INDEX) for the first supplemental record. Ackn requested. (EOD 9/22/93) mcg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Docket No. 92-CV-1566

THE CITY OF ATLANTA, ET AL., PLAINTIFFS

v.

MOSBOCHER, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
4/2/92	1	Original file, certified copy of transfer order and docket sheet received from District of Georgia, Northern District (jf) [Entry date 04/21/92]
5/11/92	—	ORDER, consolidating cases with lead case 88-cv-3474 (signed by Judge Joseph M. McLaughlin) (88-cv-3474—docket sheet) (sy) [Entry date 07/02/92]
5/11/92	—	Consolidated Member Case. Lead Case Number: 1cv88 3474 (sy) [Entry date 07/02/92]
5/11/92	—	Case closed (sy) [Entry date 07/02/92]
5/10/93	1	JUDGMENT for Bureau of the Census against City of Atlanta, Maynard Jackson: Ordered and Adjudged that the Court finds that the Secretary's decision not to adjust the 1990 census does not violate the APA, the Constitution, the Stipulation, or any statute; and the protective order governing pltffs' use of the computer tapes containing the adjusted block-level counts is vacated. (signed by Robert Heinemann) (dj) [Entry date 05/12/93]

DATE	NR.	PROCEEDINGS
6/24/93	2	Letter dated 6/17/93 from U.S. District Court for the Northern District of Georgia, Atlanta Division, to the Clerk, NY-E, stating that pursuant to the Court's order dated 2/24/92, they transferred their action to us. However, at the time the original record was not accessible and a duplicate was transmitted. Now, enclosed is the original file. (tv)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Docket No. 92-CV-2037

FLORIDA HOUSE OF REPRESENTATIVES, ET AL.,
PLAINTIFFS

v.

MOSBACHER, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
5/1/92	1	Original file, certified copy of transfer order and docket sheet received from District of Florida, Tallahassee Division Northern Division (jf) [Entry date 05/07/92]
5/1/92	—	ORDER, consolidating cases with lead case 88-cv-3474 (docket sheet). (signed by Judge Joseph M. McLaughlin, dtd 4/27/92). See document #323 in 88-cv-3474. (sy) [Entry date 07/02/92]
5/1/92	—	Consolidated Member Case. Lead Case Number: 1cv88 3474 (sy) [Entry date 07/02/92]
5/1/92	—	Case closed (sy) [Entry date 07/02/92]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 93-6183

THE CITY OF NEW YORK, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF COMMERCE, ET AL., DEFENDANTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
7/8/93	Copy of district court docket entries and notice of appeal on behalf of Appellant City of NY, Appellant State of NY, Appellant Daniel E. Lungren, Appellant City Of Los Angeles, Appellant City Of Chicago, Appellant Dade County, Florida, Appellant U.S. Conference, Appellant National League, Appellant League Of United, Appellant NAACP, Appellant Marcella Maxwell, Appellant Donald H. Elliott, Appellant John Mack, Appellant Olga Morales, Appellant Timothy W. Wright, Appellant Raymond G. Romero, Appellant Antonio Gonzales, Appellant Athalie Range, Appellant State Of Texas, Appellant City Of Phoenix, Appellant State Of New Jersey, Appellant State Of Florida, Appellant City Of Cleveland, Appellant City Of Denver, Appellant City Of Inglewood, Appellant City Of New Orleans, Appellant City Of Oakland, Appellant City Of Pasadena, Appellant City Of Philadelphia, Appellant City Of San Antonio, Appellant City Of

DATE	PROCEEDINGS
	San Fran, Appellant Broward County, Appellant State Of Arizona, Appellant City Of Baltimore, Appellant City Of Boston, Appellant City Of Long Beach, Appellant City Of San Jose, Appellant Los Angeles County, Appellant San Bernadino County, Appellant District Of Columbia, Appellant Navajo Nation, Appellant State Of New Mexico, Appellant City Of Tucson, Appellant Council Of Great, Appellant City Of Atlanta, Appellant Maynard Jackson, Appellant Florida House, Appellant Florida State, Appellant Miguel A. De Grandy, Appellant Willye Dennis, Appellant Mario Diaz-Blancart, Appellant Charles Evans, Appellant Rodolfo Garcia, Appellant Bollowy L. Johnson, Appellant Alfred J. Lawson, Appellant Willis Logan, Appellant Johnnie McMillan, Appellant Alzo J. Reddick, Appellant Peter Rudy Wallace, Appellant T. K. Wetherell filed. [93-6183] Form C due on 7/16/93. Form D due on 7/16/93. (com)
7/16/93	Appellant City of NY, Appellant State of NY, Appellant Daniel E. Lungren, Appellant City Of Los Angeles, Appellant City Of Chicago, Appellant Dade County, Florida, Appellant U.S. Conference, Appellant National League, Appellant League Of United, Appellant NAACP, Appellant Marcella Maxwell, Appellant Donald H. Elliott, Appellant John Mack, Appellant Olga Morales, Appellant Timothy W. Wright, Appellant Raymond G. Romero, Appellant Antonio Gonzales, Appellant Athalie Range, Appellant State Of Texas, Appellant City Of Phoenix, Appellant State Of New Jersey, Appellant State Of Florida, Appellant City Of Cleveland, Appellant City Of Denver, Appellant City Of Inglewood, Appellant City Of New Orleans, Appellant City Of Oakland, Appellant City Of Pasadena, Appellant City Of Philadelphia, Appellant City Of San Antonio, Appellant City Of San

DATE	PROCEEDINGS
	Fran, Appellant Broward County, Appellant State Of Arizona, Appellant City Of Baltimore, Appellant City Of Boston, Appellant City Of Long Beach, Appellant City Of San Jose, Appellant Los Angeles County, Appellant San Bernadino County, Appellant District Of Columbia, Appellant Navajo Nation, Appellant State Of New Mexico, Appellant City Of Tucson, Appellant Council Of Great, Appellant City Of Atlanta, Appellant Maynard Jackson, Appellant Florida House, Appellant Florida State, Appellant Miguel A. De Grandy, Appellant Willye Dennis, Appellant Mario Diaz-Blancart, Appellant Charles Evans, Appellant Rodolfo Garcia, Appellant Bollowy L. Johnson, Appellant Alfred J. Lawson, Appellant Willis Logan, Appellant Johnnie McMillan, Appellant Alzo J. Reddick, Appellant Peter Rudy Wallace, Appellant T. K. Wetherell Form C filed, with proof of service. [93-6183] Form C deadline satisfied. (com)
7/16/93	Appellant City of NY, Appellant State of NY, Appellant Daniel E. Lungren, Appellant City Of Los Angeles, Appellant City Of Chicago, Appellant Dade County, Florida, Appellant U.S. Conference, Appellant National League, Appellant League Of United, Appellant NAACP, Appellant Marcella Maxwell, Appellant Donald H. Elliott, Appellant John Mack, Appellant Olga Morales, Appellant Timothy W. Wright, Appellant Raymond G. Romero, Appellant Antonio Gonzales, Appellant Athalie Range, Appellant State Of Texas, Appellant City Of Phoenix, Appellant State Of New Jersey, Appellant State Of Florida, Appellant City Of Cleveland, Appellant City Of Denver, Appellant City Of Inglewood, Appellant City Of New Orleans, Appellant City Of Oakland, Appellant City Of Pasadena, Appellant City Of Philadelphia, Appellant City Of San Antonio, Appellant City Of San Fran, Appellant Broward County,

DATE	PROCEEDINGS
	Appellant State Of Arizona, Appellant City Of Baltimore, Appellant City of Boston, Appellant City Of Long Beach, Appellant City Of San Jose, Appellant Los Angeles County, Appellant San Bernadino County, Appellant District Of Columbia, Appellant Navajo Nation, Appellant State Of New Mexico, Appellant City Of Tucson, Appellant Council Of Great, Appellant City Of Atlanta, Appellant Maynard Jackson, Appellant Florida House, Appellant Florida State, Appellant Miguel A. De Grandy, Appellant Willye Dennis, Appellant Mario Diaz-Blancart, Appellant Charles Evans, Appellant Rodolfo Garcia, Appellant Bollowy L. Johnson, Appellant Alfred J. Lawson, Appellant Willis Logan, Appellant Johnnie McMillan, Appellant Alzo J. Reddick, Appellant Peter Rudy Wallace, Appellant T. K. Wetherell Form D filed, with proof of service. [93-6183] Form D deadline satisfied. (com)
8/4/93	Scheduling order #1 filed. Record on appeal due on 8/27/93. Appellant's brief and appendix due on 9/3/93. Appellee's brief due on 10/4/93. Argument as early as week of 10/25/93. (Pre-Argument Conference scheduled for 8/18/93 @ 3:45 pm). (coc)
8/13/93	Appellant State of NY motion to extend time to file brief and appendix FILED (w/pfs). [423941-1] (ond)
8/18/93	New scheduling order number #2 filed. New record on appeal due date is 9/17/93. New appellant's brief due date is 9/24/93. New appellee's brief due date is 10/25/93. New argument week as early as 11/15/93. (ond)
8/25/93	Order FILED MOOTING motion for extended time; in light of the scheduling order dated 18 August 1993 [423941-1] by Appellant State of NY, on motion dated 8/13/93. (ond)

DATE	PROCEEDINGS
9/22/93	Notice of appearance form on behalf of Peter C. Anderson, Esq., received. (Orig. to Calendar) (rsk)
9/22/93	Notice of appearance form on behalf of Gretchen A. Harris, Esq., received. (Orig. to Calendar) (rsk)
9/23/93	The CAPTION PAGE for this appeal has been AMENDED. (com)
9/23/93	Record on appeal index in lieu of record filed, 88-cv-3474, 92-cv-1566, 92-cv-2037. (ond)
9/23/93	First supplemental index in lieu of supplemental record filed. (ond)
9/24/93	The CAPTION PAGE for this appeal has been AMENDED. (PER KB INSTRUCTION) (coa)
9/24/93	Appellants City of NY, State of NY, City Of Los Angeles, City Of Chicago, Dade County, Florida, U.S. Conference, National League, League Of United, NAACP, Marcella Maxwell, Donald H. Elliott, John Mack, Olga Morales, Timothy W. Wright, Raymond G. Romero, Antonio Gonzales, Athalie Range, State Of Texas, City Of Phoenix, State Of New Jersey, State Of Florida, City Of Cleveland, City Of Denver, City Of Inglewood, City Of New Orleans, City Of Oakland, City Of Pasadena, City Of Philadelphia, City Of San Antonio, City Of San Fran, Broward County, State Of Arizona, City Of Baltimore, City Of Boston, City Of Long Beach, City Of San Jose, Los Angeles County, District Of Columbia, Navajo Nation, State Of New Mexico, City Of Tucson, Council Of Great, City Of Atlanta, Maynard Jackson, Florida House, Florida State, Miguel A. De Grandy, Willye Dennis, Rodolfo Garcia, Alfred J. Lawson, Willis Logan, Johnnie McMillan, Alzo J. Reddick, Peter Rudy Wallace, T. K. Wetherell, Mario Diaz-Balart, San Bernardino, Bollowy L. "Bo" Johnson,

DATE	PROCEEDINGS
	Charles Evans, San Bernardino County brief FILED with proof of service. (ond)
9/24/93	Appellants City of NY, State of NY, City Of Los Angeles, City Of Chicago, Dade County, Florida, U.S. Conference, National League, League Of United, NAACP, Marcella Maxwell, Donald H. Elliott, John Mack, Olga Morales, Timothy W. Wright, Raymond G. Romero, Antonio Gonzales, Athalie Range, State Of Texas, City Of Phoenix, State Of New Jersey, State Of Florida, City Of Cleveland, City Of Denver, City Of Inglewood, City Of New Orleans, City Of Oakland, City Of Pasadena, City Of Philadelphia, City Of San Antonio, City Of San Fran, Broward County, State Of Arizona, City Of Baltimore, City Of Boston, City Of Long Beach, City of San Jose, Los Angeles County, District Of Columbia, Navajo Nation, State Of New Mexico, City Of Tucson, Council Of Great, City Of Atlanta, Maynard Jackson, Florida House, Florida State, Miguel A. De Grandy, Willye Dennis, Rodolfo Garcia, Alfred J. Lawson, Willis Logan, Johnnie McMillan, Alzo J. Reddick, Peter Rudy Wallace, T. K. Wetherell, Mario Diaz-Balart, San Bernardino, Bollowy L. "Bo" Johnson, Charles Evans joint appendix filed w/pfs. (ond)
9/24/93	Notice of appearance form on behalf of Mark B. Stern Esq., received. (Orig. to Calendar) (rsk)
9/24/93	Notice of appearance form on behalf of Peter Zimroth Esq., received. (Orig. to Calendar) (rsk)
9/27/93	Letter regarding oral argued received, cc: to calendar. (ond)
9/27/93	Notice of appearance form on behalf of Peter C. Anderson, Esq., received. (Orig. to Calendar) (rsk)
10/12/93	Appellees Donald K. Anderson, State Of Oklahoma, State Of Wisconsin, Richard W. Riley, Federico

DATE	PROCEEDINGS
	Pena, Robert B. Reich, Henry Cisneros, Donna E. Shalala, Michael Espy, William J. Clinton, Barbara Everitt Bryant, Bureau Of Census, Michael R. Darby, Ronald H. Brown, U.S. DOC motion to extend time to file brief and appendix FILED (w/pfs). [443416-1] (ond)
10/20/93	Order FILED GRANTING motion for extended time [443416-1] by Appellee Donald K. Anderson, State Of Oklahoma, State Of Wisconsin, Richard W. Riley, Federico Pena, Robert B. Reich, Henry Cisneros, Donna E. Shalala, Michael Espy, William J. Clinton, Barbara Everitt Bryant, Bureau Of Census, Michael R. Darby, Ronald H. Brown, U.S. DOC, endorsed on motion form dated 10/12/93. Extended appellee's brief due date is 11/8/93. Extended argument week as early as 11/22/93 (ond)
11/8/93	Appellee State Of Oklahoma, Appellee State Of Wisconsin brief filed with proof of service. (ond)
11/9/93	Appellees Donald K. Anderson, Richard W. Riley, Federico Pena, Robert B. Reich, Henry Cisneros, Donna E. Shalala, Michael Espy, William J. Clinton, Barbara Everitt Bryant, Bureau Of Census, Michael R. Darby, Ronald H. Brown, U.S. DOC brief filed with proof of service. (ond)
11/10/93	Proposed for argument the week of 1/3/94. (car)
11/16/93	Appellants T. K. Wetherell, Peter Rudy Wallace, Alzo J. Reddick, Johnnie McMillan, Willis Logan, Alfred J. Lawson, Bollowy L. "Bo" Johnson, Rodolfo Garcia, Charles Evans, Mario Diaz-Balart, Willye Dennis, Miguel A. De Grandy, Florida State, Florida House, Maynard Jackson, City Of Atlanta, Council Of Great, People of State, County Of Hudson, City Of Tucson, State Of New Mexico, Navajo Nation, District Of Columbia, ant San

DATE	PROCEEDINGS
	Bernardino, Los Angeles County, City Of San Jose, City Of Long Beach, City Of Boston, City Of Baltimore, State Of Arizona, Broward County, City Of San Fran, City Of San Antonio, City Of Philadelphia, City Of Pasadena, City Of Oakland, City Of New Orleans, City Of Inglewood, City Of Denver, City Of Cleveland, State Of Florida, State Of New Jersey, City Of Phoenix, State Of Texas, Athalie Range, Antonio Gonzales, Raymond G. Romero, Timothy W. Wright, Olga Morales, John Mack, Donald H. Elliott, Marcella Maxwell, NAACP, League Of United, National League, U.S. Conference, Dade County, Florida, City Of Chicago, City Of Los Angeles, State of NY, City of NY, motion to extend time to file reply brief FILED (w/pfs). [456743-1] (ond)
12/1/93	Set for argument on 1/5/94. [93-6183] (car)
12/6/93	Appellant T. K. Wetherell, Appellant Peter Rudy Wallace, Appellant Alzo J. Reddick, Appellant Johnnie McMillan, Appellant Willis Logan, Appellant Alfred J. Lawson, Appellant Bollowy L. "Bo" Johnson, Appellant Rodolfo Garcia, Appellant Charles Evans, Appellant Mario Diaz-Balart, Appellant Willye Dennis, Appellant Miguel A. De Grandy, Appellant Florida State, Appellant Florida House, Appellant Maynard Jackson, Appellant City Of Atlanta, Appellant Council Of Great, Appellant City Of Tucson, Appellant State Of New Mexico, Appellant Navajo Nation, Appellant District Of Columbia, Appellant San Bernardino, Appellant Los Angeles County, Appellant City Of San Jose, Appellant City Of Long Beach, Appellant City Of Boston, Appellant City Of Baltimore, Appellant State Of Arizona, Appellant Broward County, Appellant City Of San Fran, Appellant City Of San Antonio, Appellant City Of Philadelphia, Appellant City Of Pasadena, Appellant City

DATE	PROCEEDINGS
	Of Oakland, Appellant City Of New Orleans, Appellant City Of Inglewood, Appellant City Of Denver, Appellant City Of Cleveland, Appellant State Of Florida, Appellant State Of New Jersey, Appellant City Of Phoenix, Appellant State Of Texas, Appellant Athalie Range, Appellant Antonio Gonzales, Appellant Raymond G. Romero, Appellant Timothy W. Wright, Appellant Olga Morales, Appellant John Mack, Appellant Donald H. Elliott, Appellant Marcella Maxwell, Appellant NAACP, Appellant League Of United, Appellant National League, Appellant U.S. Conference, Appellant Dade County, Florida, Appellant City Of Chicago, Appellant City Of Los Angeles, Appellant State of NY, Appellant City of NY reply brief received. Problem: awaiting motion from calendar.
12/7/93	Order FILED GRANTING motion for extended time [456743-1] by Appellant T. K. Wetherell, Peter Rudy Wallace, Alzo J. Reddick, Johnnie McMillan, Willis Logan, Jr., Alfred J. Lawson Jr., Bollowy L. "Bo" Johnson, Rodolfo Garcia Jr., Charles Evans, Mario Diaz-Balart, Willye Dennis, Miguel A. De Grandy, Florida State, Florida House, Maynard Jackson, City Of Atlanta, Council Of Great, People of State, County Of Hudson, City Of Tucson, State Of New Mexico, Navajo Nation, District Of Columbia, San Bernardino, Los Angeles County, City Of San Jose, City Of Long Beach, City Of Boston, City Of Baltimore, State Of Arizona, Broward County, City Of San Fran, City Of San Antonio, City Of Philadelphia, City Of Pasadena, City Of Oakland, City Of New Orleans, City Of Inglewood, City Of Denver, City Of Cleveland, State Of Florida, State Of New Jersey, City Of Phoenix, State Of Texas, Athalie Range, Antonio Gonzales, Raymond G. Romero, Timothy W. Wright III, Olga Morales, John Mack, Donald H.

DATE	PROCEEDINGS
	Elliott, Marcella Maxwell, NAACP, League Of United, National League, U.S. Conference, Dade County, Florida, City Of Chicago, City of Los Angeles, State of NY, City of NY, endorsed on motion form dated 11/16/93. Extended appellant's reply brief due on 12/6/93. (cao)
12/7/93	Appellants T. K. Wetherell, Peter Rudy Wallace, Alzo J. Reddick, Johnnie McMillan, Willis Logan, Alfred J. Lawson, Bollowy L. "Bo" Johnson, Rodolfo Garcia, Charles Evans, Mario Diaz-Balart, Willye Dennis, Miguel A. De Grandy, Florida State, Florida House, Maynard Jackson, City Of Atlanta, Council Of Great, City Of Tucson, State Of New Mexico, District Of Columbia, San Bernardino, Los Angeles County, City Of San Jose, City Of Long Beach, City Of Boston, City Of Baltimore, State Of Arizona, Broward County, City Of San Fran, City Of San Antonio, City Of Philadelphia, City Of Pasadena, City Of Oakland, City Of New Orleans, City Of Inglewood, City Of Denver, City Of Cleveland, State Of Florida, State Of New Jersey, City Of Phoenix, State Of Texas, Athalie Range, Antonio Gonzales, Raymond G. Romero, Timothy W. Wright, Olga Morales, John Mack, Donald H. Elliott, Marcella Maxwell, NAACP, League Of United, National League, U.S. Conference, Dade County, Florida, City Of Chicago, City Of Los Angeles, State of NY, City of NY reply brief filed with proof of service. Satisfy appellant's reply brief due. (cao)
1/5/94	Case heard before Timbers, Kearse, Leval, C.JJ. (TAPE: 101 & 102) (cag)
1/13/94	Record on appeal after index filed. (12 volumes) (ona)
1/13/94	First Supplemental Record on appeal after index filed. (ona)

DATE	PROCEEDINGS
1/13/94	First supplemental record on appeal after index filed. (ona)
2/18/94	Letter dated 2/18/94 received from New York City Law Department, in which David B. Goldin, Esq. advises the court of the inadvertant [*sic*] omission of the City of Houston as plaintiffs-appellants in the existing caption. Copy to Systems. (onw)
2/18/94	Letter dated 2/18/94 received from NYC Law Department, in which David B. Goldin advises of need for further correction as to existing caption. Copy to Systems. (onw)
2/22/94	The CAPTION PAGE for this appeal has been AMENDED. (unv)
3/1/94	The CAPTION PAGE for this appeal has been AMENDED. (unv)
3/8/94	Appellee U.S. DOC 28(J) letter received. (cc: panel) (ona)
8/8/94	Judgment of the district court is VACATED, AND THE MATTER IS REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION by published signed opinion filed per Judge Kearse. (ono)
8/8/94	Judgment filed. (ono)
8/8/94	Judge Timbers DISSENTING in a separate opinion filed. (ono)
8/12/94	Appellant U.S. Conference motion to extend time to file petition for rehearing en banc until 21 September 1994 FILED (w/pfs). [551453-1] (ond)
8/15/94	Appellee State Of Wisconsin motion to extend time to file petition for rehearing en banc and to include 21 September 1994 FILED (w/pfs). [551456-1] (ond)

DATE	PROCEEDINGS
8/17/94	Appellee State Of Oklahoma motion to extend time to file petition for rehearing en banc 21 September 1994 FILED (w/pfs). [551925-1] (ond)
8/19/94	Order FILED GRANTING motion for extended time to file petition for rehearing and suggestion en banc until 21 September 1994 [551453-1] by Appellant U.S. Conference, endorsed on motion form dated 8/12/94, ALK, CJ. (ond)
8/19/94	Order FILED GRANTING motion for extended time to file petition for rehearing and suggestion en banc until 21 September 1994 [551456-1] by Appellee State Of Wisconsin, endorsed on motion form dated 8/15/94, ALK, CJ. (ond)
8/19/94	Order FILED GRANTING motion for extended time to file petition for rehearing and suggestion en banc until 21 September 1994 [551925-1] by Appellee State Of Oklahoma, endorsed on motion form dated 8/17/94, ALK, CJ. (ond)
8/22/94	Appellee State Of Wisconsin Petition for rehearing and, petition for rehearing in banc [553163-2] with proof of service filed. (ond)
8/22/94	Appellants T. K. Wetherell, Peter Rudy Wallace, Alzo J. Reddick, Johnnie McMillan, Willis Logan, Alfred J. Lawson, Bollowy L. "Bo" Johnson, Rodolfo Garcia, Charles Evans, Mario Diaz-Balart, Willye Dennis, Miguel A. DeGrandy, Florida State, Florida House, Maynard Jackson, City Of Atlanta, Council Of Great, People of State, County Of Hudson, City Of Tucson, State Of New Mexico, Navajo Nation, District Of Columbia, San Bernardino, Los Angeles County, City Of San Jose, City Of Long Beach, City Of Boston, City Of Baltimore, State Of Arizona, Broward County, City Of San Fran, City Of San Antonio, City Of Philadelphia, City Of Pasadena, City Of Oakland, City Of New Orleans, City Of Inglewood, City Of Denver, City

DATE	PROCEEDINGS
	Of Cleveland, State Of Florida, State Of New Jersey, City Of Phoenix, State Of Texas, Athalie Range, Antonio Gonzales, Raymond G. Romero, Timothy W. Wright, Olga Morales, John Mack, Donald H. Elliott, Marcella Maxwell, NAACP, League Of United, National League, U.S. Conference, Dade County, Florida, City Of Chicago, City Of Los Angeles, State of NY, City of NY, City of Houston, Jerry Alan Wood, Carolyn Sue Lopez, itemized and verified bill of costs received. (ond)
9/20/94	Appellee State Of Oklahoma petition for rehearing received. Problem: Printing type is Point 12 proportional. (ag42)
9/21/94	Appellee State Of Oklahoma Petition for rehearing with suggestion of rehearing in banc [563734-2] with proof of service filed. (ag42)
9/22/94	Letter received from U.S. Dept. of Justice in regards to not filing a petition for rehearing. (ag42)
10/31/94	"IT IS HEREBY ORDERED that no costs are awarded at this time. In the event that plaintiffs ultimately prevail on the merits of their claims, the district court may award them the costs of the present appeal." (Hons. WHT, ALK & PNL, CJJs) (For the Court: AH) (ag42)
11/1/94	Certified copy of the Order not Awarding Costs at this time, dated 10/31/94, issued to the district court. (ag42)
12/12/94	Order FILED DENYING petition for REHEARING [563734-1] and petition for rehearing in banc [563734-2] by Appellee State Of Oklahoma. (ag42)
1/4/95	Order FILED DENYING petition for REHEARING [553163-1] and petition for rehearing in banc [553163-2] by Appellee State Of Wisconsin. (ag41)
1/13/95	Judgment MANDATE ISSUED. (ag41)

DATE	PROCEEDINGS
1/20/95	Mandate receipt returned from the district court. (ren)
3/30/95	Letter from Supreme Court informing the of extension of time to file petition for writ of certiorari received (ag41)
4/11/95	Notice of filing petition for writ of certiorari for Appellant City Of Oakland dated 14 April 1995 filed. Supreme Ct.#: 94-1631. (ag41)
4/28/95	Letter received from Clayton R. Higgins, Jr., dated April 25, 1995. Indicating, the application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Ginsburg, who on April 25, 1995, extended the time to and including June 3, 1995. (ag43)
6/9/95	Notice of filing petition for writ of certiorari for Appellee U.S. DOC dated 5 June 1995 filed. Supreme Ct.#: 94-1985. (ag41)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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88 Civ. 3474 (JMcL)

THE CITY OF NEW YORK, THE STATE OF NEW YORK, THE PEOPLE OF THE STATE OF CALIFORNIA *Ex Rel.* JOHN K. VAN DE KAMP, ATTORNEY GENERAL, THE CITY OF LOS ANGELES, THE CITY OF CHICAGO, THE CITY OF HOUSTON, DADE COUNTY, FLORIDA, THE U.S. CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES, THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, MARCELLA MAXWELL, DONALD H. ELLIOTT, JOHN MACK, OLGA MORALES, TIMOTHY W. WRIGHT III, RAYMOND G. ROMERO, ANTONIO GONZALEZ, ATHALIE RANGE, JERRY ALAN WOOD, and CAROLYN SUE LOPEZ, PLAINTIFFS

—against—

UNITED STATES DEPARTMENT OF COMMERCE, C. WILLIAM VERITY, as Secretary of the United States Department of Commerce, ROBERT ORTNER, as Under Secretary for Economic Affairs of the United States Department of Commerce, BUREAU OF THE CENSUS, JOHN G. KEANE, as Director of the Bureau of the Census, RONALD W. REAGAN, as President of the United States, and DONNALD K. ANDERSON, as Clerk of the United States House of Representatives, DEFENDANTS

AMENDED COMPLAINT

INTRODUCTION

1. This is an action under the Constitution and laws of the United States challenging the refusal of the federal government to conduct a fairer and more accurate decennial census in 1990.

2. The decennial census is one of the fundamental instruments for allocating political power in this country. It determines the apportionment of representatives in Congress and in state legislatures, the allocation of Electoral College votes in presidential elections, and the distribution among states and localities of billions of dollars of federal funds for housing, education, transportation, environmental protection, and other services. If the census is inaccurate, the apportionment of legislatures, the allocation of Electoral College votes, and the distribution of funds are necessarily distorted.

3. In 1990, the defendants will conduct the 21st decennial census. It is a certainty that, as now planned, the census will seriously undercount Blacks, Hispanics, and members of the disadvantaged groups. It will thus also seriously undercount the states and localities in which a disproportionate number of these individuals live.

4. Acknowledging the inevitability of this undercount, the Census Bureau determined in 1987 that it would prepare to use statistical techniques to correct the undercounts. Indeed, the Bureau began the preparations necessary to correct the 1990 census.

5. But the Commerce Department, which oversees the Bureau, then reversed the decision, prohibiting the Bureau from any further preparations for correction. The Commerce Department's action was not based on any legitimate technical or operational considerations, and the plaintiffs now ask the Court to require the defendants to correct in 1990.

6. This action arises under Article I, Section 2 of the Constitution; the Fifth and Fourteenth Amendments to

the Constitution; the laws of the United States relating to the census and the apportionment of representatives in Congress, 13 U.S.C. §§ 1 *et seq.* and 2 U.S.C. § 2a; and the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337, and 1361, and 5 U.S.C. § 702. Declaratory relief is authorized by 28 U.S.C. §§ 2201-2202. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

8. Plaintiffs The State of New York and The State of California are entitled to a number of representatives in Congress pursuant to Article I, Section 2 of the Constitution, as amended by Section 2 of the Fourteenth Amendment, based on "the whole number of persons" in the state. They are referred to collectively as the "plaintiff states"

9. Plaintiff The City of New York is a municipal corporation organized under the laws of the State of New York.

10. Plaintiff The City of Los Angeles is a municipal corporation and charter city organized under the laws of the State of California.

11. Plaintiff The City of Chicago is a municipal corporation organized under the laws of the State of Illinois.

12. Plaintiff The City of Houston is a municipal corporation organized under the laws of the State of Texas.

13. Plaintiff Dade County, Florida is a political subdivision of the State of Florida. Plaintiffs The City of New York, The City of Los Angeles, The City of Chicago, The City of Houston, and Dade County, Florida, are referred to collectively as the "plaintiff municipalities."

14. Plaintiff The U.S. Conference of Mayors is an organization of approximately 840 member mayors of cities with populations exceeding 30,000.

15. Plaintiff The National League of Cities is a membership organization representing approximately 16,000 cities through direct membership and membership in 49 affiliated state municipal leagues.

16. Plaintiff The League of United Latin American Citizens is the nation's largest and oldest Hispanic membership organization, serving the needs of Hispanic communities throughout the country.

17. Plaintiff The National Association for the Advancement of Colored People is the nation's largest and oldest civil rights membership organization, with more than 2200 branches, working for the political, social, and economic equality of all minorities.

18. Plaintiff Marcella Maxwell is a citizen of the United States, and a voter and taxpayer in the State and City of New York, residing in the 10th Congressional District, the 23rd State Senatorial District, and the 44th State Assembly District.

19. Plaintiff Donald H. Elliott is a citizen of the United States, and a voter and taxpayer in the State and City of New York, residing in the 13th Congressional District, the 25th State Senatorial District, and the 52nd State Assembly District.

20. Plaintiff John Mack is a citizen of the United States, and a voter and taxpayer in the State of California and the City of Los Angeles, residing in the 28th Congressional District, the 30th State Senatorial District, and the 49th State Assembly District.

21. Plaintiff Olga Morales is a citizen of the United States, and a voter and taxpayer in the State of California and the City of Los Angeles, residing in the 25th Congressional District, the 23rd State Senatorial District, and the 55th State Assembly District.

22. Plaintiff Timothy W. Wright III is a citizen of the United States, and a voter and taxpayer in the State of Illinois and the City of Chicago, residing in the 1st Congressional District, the 13th State Senatorial District, and the 25th State Representative District.

23. Plaintiff Raymond G. Romero is a citizen of the United States, and a voter and taxpayer in the State of Illinois and the City of Chicago, residing in the 9th Congressional District, the 2nd State Senatorial District, and the 3rd State Representative District.

24. Plaintiff Antonio Gonzalez is a citizen of the United States, and a voter and taxpayer in the State of Florida and the City of Miami, residing in the 17th Congressional District, the 33rd State Senatorial District, and the 109th State Representative District.

25. Plaintiff Athalie Range is a citizen of the United States, and a voter and taxpayer in the State of Florida and the City of Miami, residing in the 17th Congressional District, the 37th State Senatorial District, and the 101st State Representative District.

26. Plaintiff Jerry Alan Wood is a citizen of the United States, and a voter and taxpayer in the State of Texas and the City of Houston, residing in the 18th Congressional District, the 15th State Senatorial District, and the 137th State Representative District.

27. Plaintiff Carolyn Sue Lopez is a citizen of the United States, and a voter and taxpayer in the State of Texas and the City of Houston, residing in the 18th Congressional District, the 15th State Senatorial District, and the 143rd State Repersentative District.

28. Defendant United States Department of Commerce is a department of the federal government.

29. Defendant C. William Verity is the Secretary of the United States Department of Commerce. The Secretary is responsible under 13 U.S.C. § 141 for taking the decennial census, and has delegated that responsibility to the Director of the Bureau of the Census. The delegation

was made pursuant to Department Organization Order 35-2A of the United States Department of Commerce ("D.O.O. 35-2A"), amended most recently on July 24, 1987.

30. Defendant Robert Ortner is the Under Secretary for Economic Affairs of the United States Department of Commerce. Pursuant to D.O.O. 35-2A, the Under Secretary oversees the Director of the Bureau of the Census.

31. Defendant Bureau of the Census is an agency within the United States Department of Commerce.

32. Defendant John G. Keane is the Director of the Bureau of the Census. Pursuant to D.O.O. 35-2A, the Director is responsible for taking the decennial census.

33. Defendant Ronald W. Reagan is the President of the United States. Pursuant to 2 U.S.C. § 2a, the President calculates the number of representatives in Congress to which each state is entitled, based on the decennial census.

34. Defendant Donnald K. Anderson is the Clerk of the United States House of Representatives. Pursuant to 2 U.S.C. § 2a, the Clerk notifies each state of the number of representatives in Congress to which it is entitled.

LEGAL FRAMEWORK

35. Article I, Section 2 of the Constitution, as amended by Section 2 of the Fourteenth Amendment, requires that representatives in Congress be apportioned according to population. For the purpose of determining population, Article I further requires that, every ten years, the United States government conduct the most accurate census practicable. These requirements are implemented by 2 U.S.C. § 2a, 13 U.S.C. § 141, and D.O.O. 35-2A.

36. Article II, Section 1 of the Constitution requires that the number of electors each state appoints to the Electoral College be equal to the number of representa-

tives and senators in Congress to which the state is entitled. This requirement is implemented by 3 U.S.C. § 3.

37. Pursuant to 13 U.S.C. § 141(b), each state is entitled to a number of representatives in Congress based on the state's population. Pursuant to 13 U.S.C. § 141(c), each state is entitled also to a report of its population broken down by municipalities and other geographical areas, for use in legislative apportionment and districting.

38. States and municipalities use the data reported to them pursuant to 13 U.S.C. § 141(c) to draw Congressional districts and to apportion state and municipal legislative districts in accordance with the "one man, one vote" requirements of the Constitution.

39. Finally, census data are used for distributing funds for housing, education, transportation, environmental protection, and other services among states and municipalities.

FACTS

The Inevitability of an Undercount in 1990

40. In every decennial census since at least 1940, there has been an undercount of the population of the United States. The national undercount has been reduced progressively over this period, but the undercount of the following groups has remained consistently and substantially higher than the national undercount: Blacks, Hispanics, other racial and ethnic minorities, documented and undocumented aliens, homeless persons, persons who do not read and speak English well, and persons living in poverty or in high-crime areas. These groups are referred to collectively as the "chronically undercounted."

41. The best-documented of the chronically undercounted are Blacks. In 1987, the Director of the Census Bureau stated that, in the last four censuses, there has been a "persistent difference" of five to six percent between the undercount of Blacks and the undercount of all others. The Director also said that the undercount of

Hispanics has been comparable to the undercount of Blacks.

42. The chronically undercounted constitute a substantially higher percentage of the population of urban areas, including the plaintiff municipalities, than they do of the population of the respective states in which the municipalities are located. The chronically undercounted also constitute a substantially higher percentage of the population of those states than they do of the population of the nation as a whole. As a result, the undercount of the urban areas has been substantially higher than the undercount of the states in which the areas are located, and the undercount of those states has been substantially higher than the undercount of the nation as a whole.

43. The chronically undercounted constitute a substantially higher percentage of the population of the Congressional and state legislative districts in which the individual plaintiffs reside than they do of the population of the respective states in which the districts are located. The chronically undercounted also constitute a substantially higher percentage of the population of those states than they do of the population of the nation as a whole. As a result, the undercount of the individual plaintiffs' districts has been substantially higher than the undercount of the states in which the districts are located, and the undercount of those states has been substantially higher than the undercount of the nation as a whole.

44. Unless the relief requested below is granted, the undercount of the urban areas and districts described in paragraphs 42 and 43 will, in the 1990 decennial census, be substantially higher than the undercount of the states in which they are located, and the undercount of those states will be substantially higher than the undercount of the nation as a whole.

The Use of Statistical Correction

45. Over the last two decades, statisticians have developed and refined certain techniques to correct the census for undercount. The principal technique is "dual-system estimation." This technique involves the taking of an independent second count of a sample of geographic areas. The persons identified in the second count are matched with the persons identified in the first—the census—to produce a third and better estimate of the population of those areas. Then, extrapolating from the sample, the Bureau estimates the population of the nation as a whole, as well as of other geographic areas and racial and ethnic groups. The independent second count is conducted shortly after the census enumeration and is referred to as a "post-enumeration survey."

46. After the 1980 census, the Census Bureau formed an Undercount Research Staff to conduct research on dual-system estimation. In the years that followed, the Staff conducted important work in this area, eliminating or substantially reducing each of the problems that had previously been associated with correction. The work was reviewed and praised by a number of distinguished groups, including a panel of the National Academy of Sciences. The work was also tested in a number of rehearsals of the 1990 census conducted by the Census Bureau.

47. On July 24, 1986, with the prior authorization of the Commerce Department, the Census Bureau announced publicly that it would follow a specific procedure in deciding whether to correct the 1990 census: In early 1987, it would determine whether correction was feasible. If it determined that it was, it would then prepare to correct in 1990. Central to its preparations would be the implementation of a post-enumeration survey of 300,000 households. Using the survey results, the Bureau would produce corrected census figures and, if those figures met certain pre-established standards of reliability, they would become the official decennial census data. The determina-

tion whether the figures met the standards of reliability would be made by the Bureau, after the survey was taken in 1990.

48. In the spring of 1987, the Director of the Bureau determined that correction was feasible and that the Bureau should prepare to correct the 1990 census. On July 14, 1987, he announced publicly that his agency was committing itself to taking the 300,000-household post-enumeration survey.

49. On or before August 7, 1987, however, the Commerce Department secretly reversed the Director's decision. Without conducting any research of its own, the Department prohibited the Director from correcting the 1990 decennial census and conducting the planned 300,000-household survey. The Department directed him instead to conduct a smaller survey, to be used only for the purpose of evaluating the census, not for correcting it.

50. The Department's directives were made with the knowledge that they would result in a disproportionate undercount of Blacks, Hispanics, and other chronically undercounted groups, and of the states and localities in which a disproportionate number of these groups reside.

51. The Department's directives were not based on legitimate technical or operational considerations.

52. The Department's directives were inconsistent with its delegation of authority to the Director with respect to the decennial census, and constituted an unwarranted intrusion upon the Director's traditional authority.

53. On October 30, 1987, at least three months after the Commerce Department had made its decision not to correct in 1990, it announced that decision to the public.

54. It is feasible to correct the 1990 census, and correction will substantially improve the accuracy of the census.

55. Unless the Bureau's discontinued correction program is restored immediately, it may well be impossible to correct the 1990 census.

The Injury to the Plaintiffs

56. Unless the relief requested below is granted, the plaintiff states and municipalities and the individual plaintiffs will suffer loss of political representation.

57. Unless the relief requested below is granted, the plaintiff states and municipalities and the individual plaintiffs will be deprived of funds distributed under federal programs on the basis of census population figures.

58. Unless the relief requested below is granted, the plaintiff states and municipalities will be deprived of the use of accurate population figures in planning their governmental operations.

59. Unless the relief requested below is granted, the members of the plaintiff organizations will suffer loss of political representation and federal funds. Among the purposes of each of the organizations is the prevention of such losses.

60. The plaintiffs have no adequate remedy at law.

FIRST CLAIM FOR RELIEF

61. Unless the relief requested below is granted, the defendants will not take the most accurate census practicable, in violation of Article I, Section 2 of the Constitution, as amended by Section 2 of the Fourteenth Amendment.

SECOND CLAIM FOR RELIEF

62. Unless the relief requested below is granted, the defendants will take a census that discriminates with respect to fundamental rights against individuals residing in legislative districts that are disproportionately undercounted, in violation of the equal protection guarantee of the Fifth Amendment to the Constitution.

THIRD CLAIM FOR RELIEF

63. Unless the relief requested below is granted, the defendants will not take the most accurate census practicable, in violation of 2 U.S.C. § 2a and 13 U.S.C. § 141.

FOURTH CLAIM FOR RELIEF

64. The action of the defendants is arbitrary and capricious, contrary to law, and an abuse of discretion, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs seek judgment:

(1) Requiring the defendants to conduct a full-scale post-enumeration survey in connection with the 1990 decennial census, and to take any other steps necessary to correct that census for undercounts or overcounts in population, using the most accurate correction methods available;

(2) Requiring the defendants to correct the 1990 decennial census for undercounts or overcounts in population, using the most accurate correction methods available;

(3) Requiring the defendants to use the corrected population figures for all purposes for which the defendants use decennial census data; and

(4) Granting such other relief as the Court deems just and proper.

Dated: New York, New York
December 14, 1988

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[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

ANSWER

Defendants,[1] through their undersigned counsel, hereby answer plaintiffs' amended complaint as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs lack standing to maintain this action.

SECOND AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over the subject matter of this action.

THIRD AFFIRMATIVE DEFENSE

The amended complaint fails to state a claim upon which relief may be granted.

FOURTH AFFIRMATIVE DEFENSE

The matters alleged in the amended complaint have been committed by law to agency discretion and are not reviewable by the Court.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to state any basis for preliminary injunctive relief.

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[1] Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Robert A. Mosbacher is substituted for defendant C. William Verity, and George W. Bush is substituted for defendant Ronald W. Reagan.

SIXTH AFFIRMATIVE DEFENSE

In response to the numbered paragraphs of the amended complaint, defendants admit, deny, or otherwise aver as follows:

1. This paragraph consists of plaintiffs' characterization of the action, which does not require an answer, but insofar as an answer may be required, deny.

2. Deny, except to admit that the results of the decennial census are used to determine the apportionment of representatives in Congress and state legislatures, the allocation of Electoral College votes in presidential elections, and the distribution of some federal funds.

3. Deny, except to admit that defendants will conduct the 21st decennial census in 1990.

4. Deny, except to admit that the Census Bureau undertook research and planning on statistical techniques to determine whether adjustment of the 1990 census for population undercounts was technically and operationally feasible.

5. Deny, except to admit that the Commerce Department oversees the Census Bureau and determined that a statistical adjustment of the 1990 census was neither technically nor operationally feasible.

6. This paragraph consists of plaintiffs' characterization of the action and not averments of fact to which an answer is required, but insofar as an answer may be required, deny.

7. This paragraph contains no averments of fact but conclusions of law to which no answer is required, but insofar as an answer is required, deny.

8. Admit.

9. Admit.

10. Admit.

11. Admit.

12. Admit.

13. Admit.

14. Defendants are without knowledge or information sufficient to form a belief as to the specific averments of this paragraph, except to admit that the plaintiff named, the U.S. Conference of Mayors, is an organization of mayors.

15. Defendants are without knowledge or information sufficient to form a belief as to the specific averments of this paragraph, except to admit that the plaintiff named, the National League of Cities, is an organization representing cities and state municipal leagues.

16. Defendants are without knowledge or information sufficient to form a belief as to the specific averments of this paragraph, except to admit that the plaintiff named, the League of United Latin American Citizens, is a Hispanic membership organization.

17. Defendants are without knowledge or information sufficeint to form a belief as to the specific averments of this paragraph except to admit that the plaintiff named, the National Association for the Advancement of Colored People, is a national civil rights organization.

18. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

19. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

20. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

21. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

22. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

23. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

24. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

25. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

26. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

27. Defendants are without knowledge or information sufficient to form a belief as to the averments of this paragraph.

28. Admit.

29. Deny the first sentence. Admit the rest of the paragraph. The Court is referred to 13 U.S.C. §§ 1, *et seq.* and Department Organization Order 35-2A for a full and complete statement of their contents. The Bureau of the Census is subject to the policy direction and general supervision of the Under Secretary for Economic Affairs of the Department of Commerce. D.O.O. 10-9, Section 4.03. The Court is referred to D.O.O. 10-9 for a full and complete statement of its contents.

30. Deny the first sentence. Admit the second sentence. The Court is referred to D.O.O. 35-2A for a full and complete statement of its contents. The Bureau of the Census is subject to the policy direction and general supervision of the Under Secretary for Economic Affairs of the Department of Commerce. D.O.O. 10-9, Section 4.03. The Court is referred to D.O.O. 10-9 for a full and complete statement of its contents.

31. Admit.

32. Deny the first sentence. Admit the second sentence, except to further answer that his actions in planning for and taking the census are subject to the policy direction and general supervision of the Under Secretary for Economic Affairs. D.O.O. 10-9, Section 4.03. The Court is referred to D.O.O. 35-2A and D.O.O. 10-9 for a full and complete statement of their contents.

33. Deny the first sentence. Admit the second sentence. The Court is referred to 2 U.S.C. § 2a for a full and complete statement of its contents.

34. Admit.

35. Admit the first sentence. Deny the second sentence, except to admit that Article I, Section 2 of the Constitution requires the United States government to conduct a census every ten years. Admit the third sentence, except to deny that the requirements of the Constitution are implemented by D.O.O. 35-2A. The Court is referred to D.O.O. 35-2A for a full and complete statement of its contents.

36. Admit.

37. Admit the first sentence. Admit the second sentence, except to deny that each state is "entitled" to a report of its population broken down by municipalities and other geographical areas for use in legislative apportionment and districting. The Court is referred to 13 U.S.C. § 141 (b) and (c) for a full and complete statement of their contents.

38. Admit.

39. Admit.

40. Admit the first sentence. Admit that the national undercount has been reduced progressively over the past 40 years, but deny the rest of the second sentence except as it pertains to blacks at the national level.

41. Deny the first sentence, except to admit that data exists to support the contention that at the national level blacks have been undercounted in previous censuses. Admit the rest of the paragraph.

42. Deny.

43. Deny.

44. Deny.

45. Deny, except to admit that statisticians have developed the "dual-system estimation" technique, which involves the taking of an independent second survey of the population in geographic areas, which is referred to as a "post-enumeration survey."

46. Admit the first sentence. Deny the second sentence, except to admit that the Undercount Research Staff (URS) conducted important research on dual-system estimation (DSE). Admit the third sentence. Deny the fourth sentence, except to admit that elements of the URS research on DSE have been tested in census tests and in the one census dress rehearsal which tested the use of DSE to evaluate census results.

47. Admit.

48. Deny the first sentence. Admit the second sentence.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

53. Deny, except to admit that on October 30, 1987, the Commerce Department announced a decision which Secretary C. William Verity had reached on October 26, 1987 that the 1990 census would not be statistically adjusted.

54. Deny.

55. Deny.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. This paragraph states a legal conclusion which does not require an answer, but insofar as an answer may be required, deny.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

Each and every allegation of the amended complaint not heretofore expressly admitted or denied is hereby denied.

Defendants deny that plaintiffs are entitled to the relief for which they pray or to any relief whatsoever.

WHEREFORE, defendants, having fully answered, respectfully request that this action be dismissed with prejudice and that this Court award the defendants costs against plaintiffs and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

STIPULATION AND ORDER

WHEREAS the Secretary of Commerce is vested by law with supervisory authority over the Bureau of the Census and the conduct of the Decennial Census and does not by anything said herein intend to relinquish any authority or decisionmaking power thereby duly vested in him, including without limitation the decision whether or not to adjust the 1990 Decennial Census; and

WHEREAS the Secretary of Commerce intends that the 1990 Decennial Census shall be conducted in conformity with all applicable statutory and constitutional requirements including without limitation 13 U.S.C. § 141(b), (c) and in a manner designed to achieve the most accurate population counts practicable; and

WHEREAS the parties hereto at this time believe that the Census, including a post-enumeration survey and other adjustment-related operations, can and will be conducted in a manner that will result in the most accurate counts practicable, and no party has any basis at this time to believe that the Census, including the PES and adjustment-related operations, cannot and will not be conducted in such a manner; and

WHEREAS the parties wish to avoid the burdens, costs and delays of unnecessary litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that:

1. All pending motions, including plaintiffs' pending Motion for a Preliminary Injunction, are withdrawn.

2. Defendants agree and represent that, notwithstanding the decision by the Department of Commerce (the "Department") announced on October 30, 1987, that there would be no statistical adjustment or correction for undercount or overcount in the 1990 Decennial Census, and without conceding that that decision was incorrect, the decision is vacated, and the question of whether or not to carry out a statistical adjustment of the 1990 Decennial Census ("adjustment") shall be made by a thorough *de novo* reconsideration undertaken with an open mind, without any prejudgment, and consistent with the procedures set forth herein.

3. Defendants agree and undertake to conduct a post-enumeration survey ("PES") of not fewer than 150,000 households, a number defendants believe is sufficient for the purpose, and such other procedures or tests as they deem appropriate, as part of the 1990 Decennial Census in a manner calculated to ensure the possibility of using the PES, not solely for evaluation purposes, but to produce corrected counts usable for congressional and legislative reapportionment, redistricting and all other purposes for which the Bureau of the Census (the "Bureau") publishes data.

4. Defendants agree that the Department will promptly develop and adopt guidelines articulating what defendants believe are the relevant technical and non-technical statistical and policy grounds for decision on whether to adjust the 1990 Decennial Census population counts. The Department's proposed guidelines shall be published in the Federal Register by December 10, 1989, with a request for comments. The guidelines shall be published in final form in the Federal Register by March 10, 1990.

5. Defendants shall determine whether an adjustment satisfies the guidelines specified in para. 4 hereof. If the

Secretary determines to make an adjustment, defendants shall publish corrected 1990 Decennial Census population data at the earliest practicable date and, in all events, not later than July 15, 1991. If the Secretary determines not to make an adjustment, defendants shall publish at the earliest practicable date and, in all events, not later than July 15, 1991, a detailed statement of its grounds, including a detailed statement of which guidelines identified in para. 4 above were not met and in what respects such guidelines were not met.

6. Defendants intend to report census counts in accordance with the dates set forth in 13 U.S.C. §§ 141(b), (c). In the event that the Department releases or publishes any population counts from the 1990 Decennial Census prior to its determination with respect to adjustment in accordance with para. 5 hereof, defendants agree that each such release or publication shall bear the following legend conspicuously on the first page:

> "The population counts set forth herein are subject to possible correction for undercount or overcount. The United States Department of Commerce is considering whether to correct these counts and will publish corrected counts, if any, not later than July 15, 1991."

7. Defendants shall establish as soon as practicable and, in all events, not later than September 30, 1989, an independent Special Advisory Panel (the "Panel") to advise the defendants on all matters relevant to the implementation of this Stipulation and, in particular, and without limitation, the guidelines identified in para. 4 above, the application and achievement of the guidelines, the expedition with which defendants are proceeding toward decision on adjustment, and plans and schedules for the implementation of the Census and the PES in a manner that will result in the most accurate final census data at the earliest practicable time. The Panel shall be comprised of eight persons, none of whom shall be em-

ployed by any of the parties hereto, of such knowledge, judgment, and probity that their judgment and advice shall be entitled to the utmost respect by defendants. All eight persons shall be appointed by the Secretary of Commerce. The Panel shall have two co-chairs from among their number appointed by the Secretary. Each member of the Panel shall submit his or her recommendations to the Secretary.

8. The members of the Panel shall be entitled to call for and shall receive the fullest cooperation from defendants, including access to all necessary or appropriate information and the opportunity to consult with any employee of the Bureau. Defendants shall take all steps necessary to give each member of the Panel reasonable access to all relevant records and information, including administering appropriate oaths of secrecy pursuant to 13 U.S.C. § 9. The Panel or any member thereof may make such disclosures, consistent with all applicable statutory requirements, as it or he deems appropriate. The Panel may adopt such rules for its governance as it deems appropriate.

9. The Department shall pay the members of the Panel a stipend of $284.80 per day for each day on which the Panel meets and such member is present and shall reimburse the members of the Panel for their reasonable and necessary expenses of travel and lodging in connection with the work of the Panel. The Department shall furnish the Panel with appropriate meeting and office facilities and clerical assistance. The Panel is entitled to retain appropriate assistants who shall be entitled to access to all materials made available to the Panel. Defendants shall make available to the Panel a fund of $500,000 against which each co-chair may draw, consistent with existing laws, rules, and regulations governing the expenditure of appropriated funds, for appropriate resources to ensure that Panel members can perform their mission.

10. The Panel shall dissolve on agreement of the parties that all of its functions pursuant to this Stipulation have been satisfied.

11. Except as expressly set forth herein, the parties reserve all their respective rights, claims, and defenses. Specifically, and not by way of limitation, plaintiffs reserve the right to challenge any of the guidelines, decisions, or procedures adopted, omitted, implemented, or announced in connection with or arising out of this Stipulation.

Dated: July 17, 1989

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APPENDIX SEVEN

CENSUS BUREAU DIRECTOR RECOMMENDATION

RECOMMENDATION TO SECRETARY OF COMMERCE ROBERT A. MOSBACHER ON WHETHER OR NOT TO ADJUST THE 1990 CENSUS

Barbara Everitt Bryant

Director, Bureau of the Census
Department of Commerce

June 28, 1991

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RECOMMENDATION TO SECRETARY OF COMMERCE ROBERT A. MOSBACHER ON WHETHER OR NOT TO ADJUST THE 1990 CENSUS

Barbara Everitt Bryant
Director, Bureau of the Census
Department of Commerce

June 28, 1991

This section of the report is organized in three sections:

Recommendation
Background
Discussion of Guidelines

RECOMMENDATION

There now exist one enumeration and two estimates of the *resident* population of the United States on April 1, 1990.

248,709,873	Resident population as enumerated in the 1990 census (an additional 922,000 overseas military, Federal employees and their dependents were added to the resident population to make up the apportionment population of 249,632,692 delivered to President George Bush December 26, 1990).
253,393,786	Estimate of resident population from Demographic Analysis (DA)
253,979,141	Estimate of resident population from Post-Enumeration Survey (PES) using Selected PES Model. This is the "adjusted" resident count.

The latter two estimates were made using the most extensive post-census research ever conducted by the Bureau of the Census.

Recommendation: As Director of the Bureau of the Census, I, Barbara Everitt Bryant, recommend to Secretary of Commerce, Robert A. Mosbacher, that results of the 1990 Post-Enumeration Survey be used to statistically adjust the 1990 census.

I make this recommendation for these reasons:

1. I believe that statistical adjustment, while far from a perfect procedure, will on average increase the accuracy of the 1990 census.

2. A majority of the Undercount Steering Committee, comprised of nine senior, career, statistical and demographic experts in the Bureau of the Census, believe statistical adjustment leads to an improvement in the counts as enumerated. I have sat through the months of deliberations of this Committee as an *ex-officio* member. Most particularly, I sat in on extensive deliberations from mid-April to mid-June 1991. The Committee evaluated the Post-Enumeration Survey and use of the model for adjustment that was pre-specified in April 1990. I have listened to research teams and consultants supervised by members of this Committee present results of 19 studies to evaluate the quality of the Post-Enumeration Survey and 11 studies of Demographic Analysis, the alternative method used to estimate the population.

3. The 1990 census counted approximately 98 percent of the population of the United States. Compared to all other survey-type efforts, whether done by government agencies, academic survey research centers, or private sector survey

organizations, counting 98 percent of a diversified population in a democratic country with no mandatory individual or household registration is an extraordinary feat. However, there remains about 2 percent of the population *who cannot be reached by enumeration efforts*, for reasons of being disconnected from the society, not understanding the census, apathy, or purposefully avoiding being counted. According to the Post-Enumeration Survey, approximately 5.3 million persons were uncounted in the 1990 census of whom 1.5 million were Blacks and 3.8 million Non-Blacks (a substantial number of the Non-Blacks were Hispanics). The size of the population that cannot be enumerated has grown over the past decade.

4. The Bureau of the Census has measured census undercount since 1940. This undercount is differentially higher for Blacks than Non-Blacks, for males than females. It is time to correct this historical problem. Extra ordinary efforts were made in 1990 to reduce the differential undercount. The differential was not reduced. There is no currently identifiable methodology to attain 100 percent population coverage via enumeration in 2000. With the increasing diversity of the country, a growing diversity documented by the 1990 census, the problem could be larger in 2000. Thus correcting for the small percent who cannot be reached should be addresed now.

5. The decennial census is the benchmark. It is the basis for drawing samples for all other household surveys during the decade, surveys that provide the Federal Government with many of the economic and social indicators used for program

planning and evaluation. It is the base from which estimates of the population are made between censuses. It is important for national social and economic statistics that this benchmark count be made as accurate as possible.

6. The quality of the 1990 Post-Enumeration Survey is excellent. Thus—for the first time in history—a tool exists with which to correct the census enumeration to make it more accurate. Two independent types of research provide estimates that the resident population of the United States is 253-254 million, not 248.7 million, as enumerated.

There is no perfect truth as to the size and distribution of the population. Adjusting may bring the numbers closer to the truth, but precise truth cannot be measured. Adjustment, while improving counts for a majority of states and communities, may not improve the count for every community; it may even reduce accuracy for some. There are places where the count, as enumerated, is closer to the truth.

Adjustment is an issue about which reasonable men and women and the best statisticians and demographers can disagree. The minority viewpoint expresed in the Census Bureau's report, which follows my report, illustrates this.

I stand, however, with the majority of the Census Bureau's Undercount Steering Committee in judging that adjustment would improve the 1990 census.

BACKGROUND

The Bureau of the Census used two types of research to evaluate the completeness of the 1990 census. These are described more fully in Appendices 3-5, but are summarized here.

Demographic Analysis:

Postcensus research to estimate the adequacy of census enumeration (coverage) of the population is not new. Demographic Analysis—using birth, death, immigration and other noncensus administrative records goes back to 1940. Historically, post-census research has been conducted for evaluation purposes to assist in planning the next census rather than for adjusting the most recent one.

Census Bureau demographers have improved and refined Demograpsic Analysis through the years, using new analyses of historical data and findings from each census to improve estimates. Thus, it has been possible to make retrospective corrections to Demographic Analysis estimates that were published after each census. According to Demographic Analysis, the census counted 98.2 percent of U.S. residents in 1990, while 1.8 percent were not counted. Based on the most current research, undercounts for the past six censuses are as shown in Table A.

Table A

Historical Estimates of the Amount and Percent of Net Undercount as Measured by Demographic Analysis, by Race: 1940 to 1990

	Demographic Analysis Estimates of Net Undercount [1] (Amount in thousands)											
	1990		1980		1970		1960		1950		1940	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
Total Population	4,684	1.8	2,802	1.2	5,653	2.7	5,700	3.1	6,537	4.1	7,513	5.4
Black	1,836	5.7	1,257	4.5	1,566	6.5	1,327	6.6	1,225	7.5	1,187	8.4
Non-Black	2,848	1.3	1,545	0.8	4,087	2.2	4,374	2.7	5,312	3.8	6,326	5.0
Difference	NA	4.4	NA	3.7	NA	4.3	NA	3.9	NA	3.8	NA	3.4

[1] Estimates represent "point" estimates of net undercount for each census and are subject to uncertainty regarding the accuracy of the estimates. The estimates for 1940-1980 are based in part on the "reverse projection" of the population aged 65 and over in 1990 using estimates of population change, which adds another component of error in those coverage estimates. The estimates represent revisions of previously published coverage estimates for 1940-1980.

As you can see, the estimated undercount in the census dropped over successive censuses from 5.4 percent in 1940 to 1.2 percent in 1980[1]. In 1990, undercount rose slightly to 1.8 percent. Throughout the period of the six censuses, however, the undercount differential between the Black and Non-Black population has remained in the 3.4-4.4 percent range. For 1990, Demographic Analysis shows a differential of 4.4 percent.

For the 1990 census, the Census Bureau mounted the most extensive effort ever to enumerate Blacks and other minorities. This included the hiring of 280 community outreach workers who worked in communities two years before census taking; involvement of 56,000 community organizations—mostly minority but also city and state Complete Count Committees; outstanding cooperation from Black and Spanish language media in running public service announcements and programs about the importance of the census; and the hiring of follow-up enumerators from minority populations, bilingual and multilanguage enumerators, and residents of public housing projects and American Indian reservations to enumerate persons in their neighborhoods. Despite this effort, the undercount differential was not reduced below its historical level.

Post-Enumeration Survey:

Demographic Analysis can provide estimates only at the national level and only for males and females, Blacks and Non-Blacks by age groups. A second type of research, a Post-Enumeration Survey, can provide detail

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[1] The undercount estimate according to Demographic Analysis published after the 1980 census in *The Coverage of Population in the 1980 Census* by Robert E. Fay, Jeffrey S. Passel, and J. Gregory Robinson (U.S. Department of Commerce, Bureau of the Census, February 1988, Table 3.2) showed 1.4 percent undercount. 1.2 percent is the revision made as part of the improvements in Demographic Analysis developed for evaluation of the 1990 census.

by demographic groups and for areas below the national level. A Post-Enumeration Survey, not Demographic Analysis, can be used as the basis for adjustment. After the 1980 census, the Bureau of the Census conducted a post-census survey for the first time. The quality of this survey was not adequate for use for adjustment purposes, and the analyses of it occurred long after the census. In the decade since, the Census Bureau has researched improvements in the methodology of post-enumeration surveys. The 1990 Post-Enumeration Survey proves to be a high quality survey of 167,000 households with matching of the individuals in these households to the 1990 census to identify those who were counted or missed.

According to the 1990 Post-Enumeration Survey, the census counted 97.9 percent of U.S. residents, but did not count 2.1 percent. As Table B shows, the 1990 undercount for Blacks is 4.8 percent; 5.2 percent for Hispanics; 5.0 percent for American Indians; 3.1 percent for Asian and Pacific Islanders, and 1.7 percent for Non-Blacks. Differences in the Black and Non-Black count between the Demographic Analysis and the Post-Enumeration Survey are not statistically significant.

Table B.

Selected Post-Enumeration Survey (PES) Estimates of Total Resident Population: United States Total

Race/ Hispanic/ Sex Group	Resident Census Enumeration	Selected PES Estimate of Population	Estimated Under/ Over-count Rate	Margin of Error due to Sampling
Total	248,709,873	253,979,141	2.1	0.4
Male	121,239,418	124,249,093	2.4	0.4
Female	127,470,455	129,730,048	1.7	0.4
Black	29,986,060	31,505,838	4.8	0.6
Male	14,170,151	14,974,382	5.4	0.6
Female	15,815,909	16,531,456	4.3	0.6
Non-Black	218,723,813	222,473,303	1.7	0.4
Male	107,069,267	109,274,711	2.0	0.4
Female	111,654,546	113,198,592	1.4	0.4
Other Populations of Interest				
Asian or Pacific Islanders	7,273,662	7,504,906	3.1	0.9
Male	3,558,038	3,688,436	3.5	1.0
Female	3,715,624	3,816,470	2.6	0.9
American Indian	1,878,285	1,976,890	5.0	2.1
Male	926,056	980,874	5.6	2.2
Female	952,229	996,016	4.4	2.0
Hispanic [2]	22,354,059	23,590,274	5.2	0.8
Male	11,388,059	12,086,513	5.8	0.9
Female	10,966,000	11,503,761	4.7	0.9

[2] Persons of Hispanic Origin may be any race.

Demographic Analysis and Post-Enumeration Survey results are similar, but not identical. The Demographic Analysis, although not usable for adjustment, does serve to confirm the results of the Post-Enumeration Survey with some exceptions. Exceptions are that Demographic Analysis shows less undercount among females and more undercount among Black males than does Demographic Analysis. Demographic Analysis and the Post-Enumeration surveys differ on the undercount within several age groups. Overall, however, both Demographic Analysis and the Post-Enumeration Survey, show a total population undercount of approximately 2 percent. Both show differentials between the counts of Blacks and Non-Blacks, males and females, with Blacks (Black children age 0-9 and Black males age 20-64) and males in total having the higher undercounts. Additionally, the Post-Enumeration Survey shows an undercount differential for Hispanics and American Indians comparable to that for Blacks. It shows a somewhat smaller undercount for Asians and Pacific Islanders, though still larger than that for Non-Blacks.

Because political representation and many Federal, State, and local funds are apportioned on the basis of census counts, the missing 2 percent are important to the communities and states in which those who do not cooperate or those who actively avoid the census live. You have heard from many mayors, governors, and legislators who stress how vital a full count is to them, and we at the Census Bureau have heard from them as well.

We have also heard the views of elected officials from states and communities where there was a full count. They say their residents cooperated; their states and communities provided human and monetary resources to get their residents counted accurately. They feel that places with undercounts had the opportunity to do the same and should not benefit from an adjustment at the expense of places where residents were cooperative.

While listening to both points of view, I base my recommendation to adjust the 1990 census on concern for accuracy of the count—both numerically and proportionally.

DISCUSSION OF GUIDELINES

Guideline 1: The Census shall be considered the most accurate count of the population of the United States, at the national, state, and local level, unless an adjusted count is shown to be more accurate. The criteria for accuracy shall follow accepted statistical practice and shall require the highest level of professional judgment from the Bureau of the Census. No statistical or inferential procedure may be used as a substitute for the Census. Such procedures may only be used as supplements to the Census.

To determine whether the census count or the adjusted count is the most accurate, the Census Bureau made its best estimate of the "true" resident population of the United States and compared the census and adjusted counts to that.

The procedure used to produce the adjusted counts was to classify individuals into one of 1,392 classifications, called post-strata. Every individual in the United States fits into one, and only one, of these post-strata. These post-strata are based on census division (such as New England or Pacific), type of place of residence (such as large or small city, suburban, nonmetro), tenure (owner or renter housing), race, Hispanic ethnicity, sex, and age. The Post-Enumeration Survey (PES), plus matching of PES households to census questionnaires, measured the proportion of each post-strata classification who were counted in the census, in the PES, counted in both, or in one but not the other. The Census Bureau used an estimating method called the Dual System Estimate (DSE) and a "smoothing method" (discussed later in this report) to estimate the population. The estimate included an

estimate for those who were missed by both the census and the PES. The DSE made this estimate nationally and for each of the 1,392 post-strata of persons. This gave the adjusted counts.

To estimate the "true" population required making many evaluations to identify bias, sampling error and other errors introduced in the survey process in the PES and the resultant DSE. These errors and biases were combined in a Total Error Model that was used to correct the Dual System Estimates for post-strata aggregated into 13 larger strata, each with similarities in characteristics. This modified population estimate was then used as the best approximation of the "true population" against which to compare both the adjusted counts and the census. This process just described is a statistical procedure called Loss Function Analysis.

Loss Function Analysis statistically describes the consequences of using a particular set of data with its aggregate loss due to error in the distribution of the population. The focus of the analysis is on *distribution* rather than magnitude of the estimates of the population. It is an appropriate tool to use to evaluate the census because most Federal uses of census data are for porportional distributions.

Loss Function Analysis shows that there would be an accuracy gain in proportion of population for 29 states offset by possible inaccuracy in 21. Inaccuracy can be in the direction of moving an area to a proportional overcount, as well as undercount, so inaccuracy is not necessarily harmful to the area. The states where accuracy would be improved contain two-thirds (67 percent) of the nation's population enumerated in the census.

Adjustment would improve the proportional accuracy of the counts for approximately 54 percent of cities and places with populations of 100,000 or more and 72 percent of counties with 100,000 or more. Demographers

reviewed adjusted counts for these places and compared them to other data—1980 counts, intercensal estimates and demographic characteristics—to see whether these adjusted counts have "face validity," that is, do they make sense? The vast majority do, but there are some exceptions. Adjustment will improve the accuracy of the 1990 population for the majority, but not for all places.

In addition to Loss Function Analysis computed by statisticians, demographers made an independent evaluation of the adjusted population counts for states. To do this they compared the adjusted state counts with counts simulated by Demographic Analysis. To make the simulations (because Demographic Analysis is only at the national level), they disaggregated census counts for each state by race and Hispanic ethnicity. They then applied DA national undercount rates to Black and Non-Black subpopulations and PES rates to Hispanic and Asian and Pacific Islanders. Then they built up new state estimates by recombining the racial and ethnic groups. These simulated state estimates further confirmed the "face validity," or reasonableness, of the adjusted state counts.

The Census Bureau examined proportional distribution for places of under 100,000. There is little direct evidence to judge whether adjusted counts are more accurate for places under 100,000. However, Loss Function Analysis shows that for metropolitan places of less than 25,000, 25,000-49,999 and 50,000 or more, and for non-metropolitan plans less than 25,000, and 25,000-49,999 in total, by these size categories, adjusted counts are more accurate than the census. However, there are concerns about the accuracy of the loss function assumptions for small areas.

The Census Bureau's nine member Undercount Steering Committee majority judges that the improvement in counts on the average for the Nation, States, and places over 100,000 population outweighs the risk that the ac-

curacy of adjusted counts might be less for smaller areas. The minority on that Committee have concerns about whether the Total Error Model is accurately measuring all sources of error.

Loss Function Analysis, based on the method of estimating the "true" population used, shows that adjustment is better than the census for apportionment. It is more likely that the corrected apportionment based on an adjusted count would be closer to the truth than further from the truth.

The Census Bureau subjected the PES and resultant DSEs to test after test to find fatal flaws in procedures. The Census Bureau did not find fatal flaws.

Evaluations show that the PES is of sufficiently high quality to use as an adjustment tool. In the professional judgment of the Census Bureau's Undercount Research Committee, this survey and the Selected PES model for adjustment improve the count over the census.

The adjusted count would improve accuracy by correcting major differentials in coverage by race and ethnicity compared to the census. Existence of these differentials is supported by Demographic Analysis and historical data. Using the adjusted numbers would not totally close the gap in the undercount of Black children aged 0-9 and Black men aged 20-64, but it would be an improvement over the census. Since minority undercounts impact on many local areas, adjusted counts would clearly improve the count for places with major minority populations. Offsetting these gains, Demographic Analysis suggests that adjustment may over correct for females. Taking into account 24 age-sex-groups, the similarity between the Post-Enumeration Survey and Demographic Analysis (though there are some differences) suggests that the PES is reflecting real undercounts in the census that adjustment would substantially, though not completely, correct.

The PES, supported by Demographic Analysis, estimates that the resident population of the United States on April 1, 1990 was approximately 5.3 million greater than was counted in the census. The fact that both these Census Bureau research projects, including the one based on administrative records rather than census data, produce nearly the same 5 million number is strong evidence that these residents of the United States exist. Logic also supports the existence of people who cannot or will not be counted, although logic cannot confirm their numbers. In my opinion, not adjusting would be denying that these 5 million persons exist. That denial would be a greater inaccuracy than any inaccuracies that adjustment may introduce.

Guideline 2. The 1990 Census may be adjusted if the adjusted counts are consistent and complete across all jurisdictional levels: national, state, local and census block. The resulting counts must be of sufficient quality and level of detail to be *usable* for Congressional reapportionment and legislative redistricting, and for all other purposes and at all levels for which census counts are published.

The adjustment model as designed allows adjustment to be carried out across all jurisdictional levels. As described earlier, each individual is classified into one of 1,392 post-strata. The PES and matching to census questionnaires plus use of the DSE measure the under/overcount of each post-stratum so that an adjustment factor can be calculated for each. Each individual is then weighted by the adjustment factor for his or her post-stratum to create the adjusted populations at all levels. This is called synthetic adjustment. The model carries out adjustment consistently and completely across all jurisdictional levels.

Because of the problems of correcting a census with a survey, an adjusted count cannot be accurate in each

of the 4 million occupied blocks, or at all larger aggregations of them. There is no PES system—short of one which took a second perfect census—that could say adjusted counts are more accurate for all blocks.

Relevant to whether counts can be carried to all levels is the question of whether the assumption approximately holds that the probability of being counted in the census is the same for all persons in the same post-strata classification. When people are combined by age and sex, these 1,392 post-strata are subdivisions of 116 larger post-strata. To test whether the people living on blocks within these 116 larger post-strata are homogeneous, that is, alike, on factors related to being counted or not, the Census Bureau conducted an analysis of the homogeneity of 115 of the 116 larger post-strata (the 116th is persons living on Indian reservations). This was done using a regression prediction model to predict an adjustment factor for block parts, then comparing that with the factor of 1.0 (no adjustment) representing the census counts. This predicted adjustment factor was also compared with the measured factor for the post-strata to be used for adjusted counts. For 24 of the 115 post-strata the census count was superior while for 91 post-strata the adjusted count was superior. This gave support to the accuracy of the Selected PES adjustment model for carrying adjustment out at the block-level within post-strata.

Two studies examined the validity of using post-strata based on census division, rather than states, for estimation. The synthetic adjustment uses post-strata based on census divisions. The two studies gave different reults. One study showed that in 8 of the 9 regions there were no significant differences among states within post-strata. The other showed significant state effects within post-strata. The Census Bureau put more weight on the first study.

Professional judgment of the majority of the Census Bureau's Undercount Steering Committee is that the prob-

ability of having been counted or not in the census is sufficiently homogeneous among block parts within post-strata to support adjustment. The minority on the Committee are concerned about the prediction model and the difference by states. I stand with the majority in use of the Selected PES adjustment model.

Guideline 3: The 1990 census may be adjusted if the estimates generated from the pre-specified procedures that will lead to an adjustment decision are shown to be more accurate than the census enumeration. In particular, these estimates must be shown to be robust to variations in reasonable alternatives to the production figures, and to variations in the statistical models used to generate adjusted procedures.

Pre-specification: Procedures for postcensus research and the model for adjustment were pre-specified in April 1990. Census Bureau statisticians set specifications well before field work for the PES and long before there were any census data. Thus there was no possibility of the model being designed to attain a desired outcome.

The Census Bureau report, which follows this one, documents on pages 9-10 that procedures were carried out according to pre-specification with one exception. A method needed to be developed to treat some unusually large variances in the operation called "smoothing." These large variances had not been anticipated. Census Bureau statisticians discussed the method they selected to handle these with the Special Advisory Panel, who also agreed these large variances should be handled separately.

Accuracy: The section on Guideline 1 states reasons why I believe that adjusted numbers are more accurate than the census.

Robustness: "Robustness" refers to the strength of a statistical model, that is, will reasonable variations produce the same results? Census Bureau statisticians examined robustness of components of the adjustment pro-

cedures at several levels, as described on pages 10-12 of their report. They simulated alternatives to the model used for imputation of missing data from the PES. There were very little missing data in this survey. The Dual System Estimates of population showed little differences between the model used and the simulated alternative ones.

The robustness of the adjustment model to variations in post-strata by alternatives of census division or state were tested to see if either stratification treatment produced different estimates of state populations. This was done following production of preliminary PES adjustment factors, which showed states within census divisions had similar undercounts. Only 3 states showed differences in population estimates when the post-stratification was done by states rather than the pre-specified census divisions. However, this analysis was limited because the PES was not designed to support direct state estimates. Some of the work discussed for Guideline 2 indicated that, in general, the post-stratification was robust.

Comparing alternative adjustment models which did not use census divisions for stratification, the Undercount Steering Committee felt that alternative methods, though differing, were still more accurate than the census. In effect, any bias in making state estimates by division would be offset by other gains.

As I discussed earlier, the Census Bureau used a "smoothing" procedure to reduce the effect of sampling errors on the adjustment factors. The smoothing model did prove to be sensitive, that is, not robust, to variations in handling of the small number of unusually large variances. There is also concern that different sets of predictor variables could product a different set of adjustment factors. Thus, the weakness of the pre-specified PES adjustment model is in its sensitivity to changes in the smoothing procedure. (See pages 11-12 of the Census Bureau

report). In that report the Undercount Steering Committee says, "The Committee is concerned about the lack of robustness in the strictest sense and potential problems in the smoothing process. On balance, the majority finds there is no evidence to conclude that concerns about the smoothing model would affect their overall assessment about the accuracy of the adjusted numbers . . . The minority cannot conclude that lack of robustness in the smoothing model is a small enough problem not to affect the accuracy of adjusted numbers."

For a final test, statisticians compared the Selected PES adjustment model that used the smoothed variances with two other models that based post-strata on different variables (for example, owner/renter). These two models produced DSEs closer to those in the Selected PES model than to the census.

Guideline 4. The decision whether or not to adjust the 1990 Census should take into account the effects such a decision might have on future census efforts.

Accurate measurement of actions individuals might take 9 years in the future is not possible. We did try to get some "feeling" for the impact a 1991 decision to adjust or not adjust the 1990 census might have on the next census. This was done by contracting with National Opinion Research Center (NORC) for a short telephone survey to recontact persons in a representative national sample of 2,478 households interviewed last year, shortly after the census, for a study of census participation. Both NORC and I agreed that measuring a "what if" situation cannot predict participation in the year 2000 census. What can be measured is a sense of how people feel *now* about what their participation might be.

NORC was able to complete interviews with persons in 1,612 (or 65 percent) of the households between May 3 and June 3, 1991. Those dates were after release of

preliminary PES adjustment figures (on April 18) and before release of the final ones (on June 13).

What the study shows is that the controversy over whether to adjust or not erodes individual intentions to participate, but that intentions to participate would be little different whether the census were to be adjusted or not.[3]

First of all, the survey shows that the adjustment issue is not high in public consciousness or well understood. Only one-quarter (23.4 percent) of persons said they had seen or heard anything about the census in the past few months. When probed about what they had seen or heard, only 14.1 percent spontaneously mentioned anything to do with adjustment, undercount or errors in the census count. This overall 14.1 percent level ranged from 7.6 percent of those with less than a high school graduate education to 22.9 percent of those who are college graduates. When told that people are talking about whether or not to adjust the results of the census to correct for errors in counting the population, 22.3 percent then recalled they had seen or heard something about this. Probing questions showed that only 4.9 percent understand the adjustment issue.

Thus for many, the survey itself became the educational tool about the adjustment issue. Table C shows measures of likelihood of participating in the next census. The Initial Measure was the first question in the survey, before any mention of adjustment. There were two Final Measures, one asking about likelihood of participating if the 1990 census were not adjusted and one about likelihood if it were adjusted. While all measures show high intentions of participating in the next census (higher than the proportion who returned mail questionnaires in 1990), there is a drop between the Initial Measure and both Final

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[3] National Opinion Research Corporation, *The Potential Impact of Adjusting or Not Adjusting the 1990 Census*, June 19, 1991.

Measures. Between the two measures, there was explanation of the issue of adjustment, several measures of potential participation under different scenarios for census-taking, and then the Final Measure.

The big dropoff between Initial and Final Measures is among those in the top category. Approximately 40 percent of those who initially said they were "extremely likely to participate" shifted to "very" or "somewhat." About 35 percent of the "very likelys" split to shift both up to "extremely" and down to "somewhat likely to participate."

Table C.

Participation in the Next Census

INITIAL MEASURE: How likely is it that your household will participate in the next census? That is, when you receive the next census questionnaire in the mail, how likely is it that a member of your household will fill it out and mail it back?	FINAL MEASURE OF LIKELIHOOD OF PARTICIPATING IN NEXT CENSUS: What if the decision is made to NOT ADJUST/ADJUST the 1990 census figures this year? How likely would your household be to participate in the next census?	
Initial	Final/Not Adjust	Final/ Adjust
Extremely likely	48.5	31.9	33.4
Very likely	35.8	39.4	42.1
TOTAL EXTREMELY AND VERY	84.3	71.3	75.5
Somewhat likely	9.2	18.4	17.2
Not very likely	5.5	8.6	5.3
Don't know/refused	1.0	1.7	2.0
	100%	100%	100%

Source: NORC, June 10, 1991.

Based on all the data in the survey, my summary is that if the next census were being taken today, the damage to

participation comes from the controversy surrounding adjustment rather than what the decision is. Intention to participate is marginally higher if the census is adjusted than if it is not. Three-quarters (75.5 percent) are "extremely or very likely to participate" if the census is adjusted compared to 71.3 percent if it is not. This difference is greater than could be caused by sampling error.[4] However, NORC points out in its conclusions: "While large numbers remain very favorably disposed to participating in the next and future censuses, this intention is a very slippery, ephemeral and changeable one . . . subject to influence by factors like the adjustment decision or, more likely, from the controversy or fallout emanating from the events that follow that decision."

Guideline 5. Any adjustment of the 1990 census may not violate the United States Constitution or Federal statutes.

As I have no legal training, I cannot make a professional judgment on this Guideline.

Guideline 6. There will be a determination whether to adjust the 1990 Census when sufficient data are available, and when analysis of the data is complete enough to make such a determination. If sufficient data and analysis of the data are not available in time to publish adjusted counts by July 15, 1991, a determination will be made not to adjust the 1990 census.

I feel sufficient data now exist to make the decision. The Census Bureau has completed all of the pre-specified evaluation studies of both Demographic Analysis and Post-Enumeration Survey results. The Census Bureau has run adjusted numbers using the PES data three ways: raw data, an initial modification, and finally choosing the Selected PES model as the best adjustment model—given

[4] 95 percent confidence level.

pre-specification in April 1990—that could be evaluated and used to produce adjusted counts by July 15, 1991.

I share with researchers at the Census Bureau the wish that there were more time to evaluate these studies and adjustment models in greater depth. However, it is always the case with research that each exploration suggests future work.

Over the coming years, perhaps even within the current year, Census Bureau statisticians are likely to develop an adjustment model, using the 1990 PES data, which improves on the Selected PES model. However, such a model is more likely to modify than to radically change the population adjustments of the Selected PES model.

New computer tapes with adjusted counts at all jurisdictional levels (PL 94-171 tapes used for redistricting) for 50 states and the District of Columbia will be available July 15.

Guideline 7. The decision whether or not to adjust the 1990 Census shall take into account the potential disruption of the process of the orderly transfer of political representation likely to be caused by either course of action.

The question of whether or not to adjust the 1990 census count has already caused some disruption. Some states have moved ahead with redistricting while others are waiting for the adjustment decision. Redistricting is always a difficult, and often controversial process. If the decision is made to adjust, clearly existing plans will require revision, most particularly in the states for which the number of seats in the House of Representatives changes.

The best case scenario is that the decision either to adjust or not adjust affects only redrawing of plans or moving ahead with redistricting. Redistricting is now a computerized process. New and alternative plans can be

produced quickly. It is the political negotiations, not the production of redistricting plans, that cause delays.

The worst case scenario would be any court or Congressional action which prevented timely reapportionment and redistricting.

There are suits in court both pro and anti-adjustment, although the suit that has precipitated the July 15, 1991 deadline for decision was brought by plaintiffs with a pro-adjustment position. There will be controversy in Congress whatever the decision. Therefore, I do not think that the decision to adjust is potentially more disruptive than the decision not to adjust.

Guideline 8. The ability to articulate clearly the basis and implications of the decision whether or not to adjust shall be a factor in the decision. The *general rationale* for the decision will be clearly stated. The technical documentation lying behind the adjustment decision shall be in keeping with professional standards of the statistical community.

The task is to articulate the use of either:

A count with a measured undercount

or

A count with a statistical adjustment to correct undercount

While explaining the first may be somewhat easier to do in layman's terms than explaining the second, either requires the Secretary of Commerce, the Department of Commerce, the Economics and Statistics Administration and the Bureau of the Census to defend the position taken.

I view articulation of the basis of the decision to adjust or the decision not to adjust as equally challenging. Therefore, this Guideline does not weigh in my recom-

mendation. There will need to be both a layman's and a statistical explanation of either choice.

The Census Bureau has maintained technical documentation of all research and procedures.

I close by repeating what I said at the beginning: I recommend statistical adjustment to improve the accuracy of the 1990 census.

APPENDIX TEN

PRESS RELEASES FROM APRIL 18, 1991 AND JUNE 13, 1991

[Materials Lodged with the Clerk of the Court]

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Case No. 88-CV-3474

THE CITY OF NEW YORK, ET AL., PLAINTIFFS

v.

UNITED STATES DEPARTMENT
OF COMMERCE, ET AL., DEFENDANTS

STIPULATION OF FACTS PROPOSED BY DEFENDANT-INTERVENOR STATE OF WISCONSIN

Plaintiffs, plaintiff-intervenors, defendants and defendant-intervenors, by their undersigned counsel, stipulate to the admission of the following facts proposed by defendant-intervenor State of Wisconsin in the trial of this matter:

1. During the 1990 decennial census, the State of Wisconsin undertook measures to inform Wisconsin residents of the importance of completing and returning their census forms.

2. Wisconsin's efforts included $225,000 of state funds being allocated for a statewide public awareness campaign

and a $525,000 matching grant program, also funded by the state, aimed at reaching groups traditionally undercounted in the decennial census.

3. The statewide public awareness campaign was launched with a kick-off event at which Governor Tommy G. Thompson declared March 1990 "Census Awareness Month" in Wisconsin. The campaign, coordinated through the Demographic Services Center in the Wisconsin Department of Administration (DOA), included printed pamphlets, posters, buttons, bumper stickers and stickers displaying the slogan "Wisconsin's Counting on You!" These materials, along with promotional information produced by the U.S. Bureau of the Census, were distributed through state agencies, local governments, libraries, schools, businesses, county extension offices, and other statewide networks.

4. State staff also produced a public service announcement for radio and television, worked with state media to encourage coverage of census issues, gave census presentations to groups around the state, and served as a clearinghouse for census information and materials. In addition, the state sponsored census poster and essay contests for middle and high school students and worked with the Wisconsin Department of Public Instruction and schools statewide to incorporate census lessons into school curricula. The state's matching grant program drew participation from twenty municipalities and associations. These included the cities of Ashland, Beloit, Eau Claire, Green Bay, Janesville, Kenosha, La Crosse, Madison, Milwaukee, Monona, New Berlin, Racine, Stevens Point, Wausau, and West Allis; the counties of Marathon, Milwaukee, Monroe, and Wood; and the Wisconsin Towns Association.

5. To qualify for a matching grant, applicants were required to meet specific population criteria and to develop local campaigns aimed at populations traditionally undercounted in the census. Undercounted groups included: racial and ethnic minorities, persons with limited English-

speaking ability, migrant workers, the homeless, residents of public housing and other concentrations of rental units, students, and individuals who may be outside the mainstream of daily life, such as the elderly or homebound.

6. Local public awareness campaigns covered a wide range of activities involving local businesses, community organizations, government agencies, media, schools, volunteer groups, and others. In some cases, locally produced materials and public service announcements were targeted to specific populations and published in several languages. Posters, billboards, and transit signs were developed in some areas and many communities established census assistance centers to assist resident in completing census forms. Participation in public awareness activities was not limited to those receiving state funds, however, as many associations, business and civic organizations, schools, and community groups statewide included census information in their newsletters, mailings, and presentations.

7. In addition to their involvement in public awareness activities, local governments helped improve the accuracy of the census through participation in several additional programs organized by the Wisconsin State Data Center (DOA-Demographic Services and the University of Wisconsin-Applied Population Laboratory). These programs allocated an additional $30,000 to the state's efforts.

8. Prior to the 1990 headcount, local Wisconsin governments worked with the Census Bureau to confirm and update local boundaries on census maps in an on-going census program known as the Boundary and Annexation Survey (BAS). The last survey occurred in the early part of 1990 when local-government officials were asked to draw their January 1990 boundaries on census maps. These boundaries formed the basis for 1990 census collection and tabulation procedures.

9. Local Wisconsin officials also assisted the Census Bureau by checking the number and location of housing

units in their municipalities through the Census Bureau's Local Review Program. In the Local Review Program, officials were asked to compare census housing unit counts with their own local housing unit estimates and to report inaccuracies to the Census Bureau. Local governments were also asked to report boundary discrepancies found on census maps.

10. During the Pre-Census phase of the Local Review Program in the fall of 1989, local officials compared their housing unit counts to preliminary housing unit counts sent to them by the Census Bureau. The Bureau spent the early part of 1990 reviewing problems and discrepancies reported by local governments and making necessary adjustments before the actual census in April 1990.

11. During the post-census phase of Local Review in the summer of 1990, local Wisconsin officials received the 1990 Census housing unit counts for their areas, along with corresponding maps, and were again asked to compare these with local sources of information and to report problems to the Census Bureau. In early fall of 1990, Census District Offices conducted field and office checks to remedy discrepancies reported by local governments, improving the accuracy of the 1990 Census results.

12. Local Wisconsin officials began preparing for participation in the Local Review Program in 1987 when the Wisconsin State Data Center conducted Local Review training sessions throughout the state. These sessions were repeated in the fall of 1989 and again in the summer of 1990. Over twenty-four training sessions were held and hundreds of local of officials attended.

13. Wisconsin led the rest of the United States in the percentage of residents who voluntarily completed and returned their census questionnaires during the 1990 decennial census. By April 23, 1990, Wisconsin had a 76.2% response rate, compared to approximately 65% nationally.

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IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

[Title Omitted in Printing]

AFFIDAVIT OF GEORGE HUMPHREYS

STATE OF OKLAHOMA)
) ss:
COUNTY OF OKLAHOMA)

George G. Humphreys, of lawful age and being first duly sworn upon oath, states:

1. I am Research Director, Oklahoma House of Representatives, a position I have held since 1985. I worked with the Oklahoma legislative leadership to preplan and carry out the adoption of appropriate legislation to accomplish reapportionment and redistricting following the 1990 census. I was responsible for selecting and training research staff, proposing a budget, making recommendations for acquiring computer hardware and software necessary to accomplish the redistricting, assisting in bill drafting, and in general preparing for and implementing changes in political districts that would result from the 1990 census.

2. For two years before becoming Research Director, I was the Information Service Director for the Oklahoma Department of Economic and Community Affairs, supervising the State Data Center. In that capacity I worked closely with Data Center staff in coordinating pre-census planning for Oklahoma with Census Bureau officials and in applying census data to use in Oklahoma.

3. Article V, Section 11A of the Oklahoma Constitution requires the state legislature to redistrict during the first regular session following a decennial census and to complete redistricting within ninety legislative days. The legislative redistricting requires the determination of boundaries for approximately 100 (101 in the 1991 plan) house districts and forty-eight senate districts. In addition, the boundaries of the federal congressional districts certified by the Clerk of the U.S. House of Representatives to Oklahoma following the decennial census must be determined.

4. In anticipation of redistricting after the 1990 census, I began hiring research staff for the House of Representatives in 1989. Eventually, four full-time staff persons and a computer consultant were hired to assist the leadership of the House on redistricting. A similar number of staff were involved on the Senate side. In addition to staff hired and consultants contracted for the effort, my supervisor, one of our staff attorneys, and I devoted considerable time to the project. Due to a lack of space in the State Capitol, the House of Representatives had to lease office space outside the Capitol and develop costly telecommunications linkages between that office and the legislative host computer where the data resided. In 1989, the State of Oklahoma contracted for the computer hardware and software to process the census data for congressional reapportionment and state redistricting. The software was tested for several months to insure accurate data processing.

5. Between October, 1989 and January, 1990, we participated in the Census Bureau's Phase 2 project to draw county precinct lines on Census Bureau maps. Boundary descriptions for thousands of voting tabulation districts (i.e., precincts) obtained from election boards in the seventy-seven counties in Oklahoma were entered into the state data base. Census Bureau Phase 2 maps were prepared, checked, corrected, and forwarded to the Census Bureau so that population counts could be re-

ported for the state by precinct. The legislature used the precincts as the basis for its reapportionment and redistricting plans.

6. Reapportionment committee chairmen in both the House of Representatives and Senate were selected during the 1989 legislative session and the committees were appointed in 1990. The committees adopted rules (e.g., tolerances in data, acceptable variance in size of legislative districts) and established timetables for consideration and passage of reapportionment and redistricting legislation. Committees in both houses conducted a dozen public hearings across Oklahoma in late 1990 and early 1991 in which public input regarding the redistricting process was sought.

7. Census data became available to Oklahoma on February 13, 1991. My staff and I worked closely with the Reapportionment Committee and leadership of the House of Representatives to draw up House district boundaries so that no House district varied in population from any other district by more than three percent. During approximately three months from February through May, 1991, our office produced hundreds of maps for review and consideration. Several thousand man-hours of time were spent by legislators, legislative leaders, and staff in processing census data to develop reapportionment and redistricting plans acceptable to both the Legislature and the Governor.

8. Congressional reapportionment was achieved with remarkable accuracy: Five Congressional districts in Oklahoma have identical populations, the sixth district has one more person than the other five.

9. The Oklahoma legislature completed the reapportionment and redistricting as required by the Oklahoma Constitution. Congressional reapportionment was enacted through S.B. 301 (Okla. Sess. Laws Ch. 260, §§ 1-8) on May 27, 1991. H.B. 1001 for redistricting the House of Representatives (Okla. Sess. Laws Ch. 189, §§ 1-9)

and S.B. 300 for redistricting the Senate (Okla. Sess. Laws Ch. 193, §§ 1-8) were signed into law by the Governor on May 15, 1991. A few errors in H.B. 1001 were corrected in S.B. 302, signed by the Governor on June 4, 1991 (Okla. Sess. Laws Ch. 311, §§ 1-10).

10. The Oklahoma legislature adjourned, as it was required to do by the Oklahoma Constitution, on May 31, 1991.

11. After the end of the legislative session, my staff and the Senate staff worked with officials in the seventy-seven counties in Oklahoma to redraw district boundaries for the three County Commissioners in each county. Under H.B. 1111 (Okla. Sess. Laws Ch. 185, §§ 1-2), each county had to be redistricted by the October 1 following publication of census data into three commissioner districts having populations as equal as practical. Commissioner districts were required to follow clearly visible, definable boundaries based on criteria established by the Census Bureau for recognizing census geography. We also prepared legal descriptions for the new state house districts and worked with the Department of Transportation in producing county maps that were used by county election boards in all seventy-seven counties. That task took approximately four months and the new precincts were used in the March 10, 1992 vote in Oklahoma's presidential preferential primary.

12. Oklahoma expended well over $1 million in accomplishing redistricting during 1991.

13. The Oklahoma legislature convened its 2nd Regular Session of the 43rd Legislature on February 3, 1992. It is scheduled to adjourn no later than May 29, 1992.

14. Candidates for all seats in the U.S. House of Representatives, Oklahoma House of Representatives, and half of the state Senate seats will file their declarations of candidacy pursuant to the 1991 district plans July 6-8, 1992. Primary elections for all contested seats in the U.S. House of Representatives, Oklahoma House of Representatives, and half the seats in the Oklahoma

Senate, based on the new district plans, as well as numerous offices at the county level, will be held on August 25, 1992. Run-off elections as needed will be conducted on September 15, 1992, and the general election will be on November 3, 1992. By law, the persons who will be sworn in as members of the Oklahoma Legislature and the Oklahoma delegation to the new Congress will have been elected pursuant to the 1991 redistricting and reapportionment plans.

15. If an adjustment is made statistically in the census data which have already been used to draw political boundaries in Oklahoma, it will not be possible to revise those boundaries again before candidates file for office and the elections are conducted. Once it adjourns at the end of May, 1992, the Oklahoma legislature will not convene again in regular session until February 1, 1993, when the 1st Regular Session of the 44th Legislature will begin.

16. It is not clear under the Oklahoma Constitution who would be responsible for reapportionment and redistricting if an adjustment to the census data were now made statistically. Oklahoma Constitution, Article V, § 11A provides that if "the Legislature shall fail or refuse to make such apportionment" within the first legislative session after the census is taken, the reapportionment would be accomplished by a commission composed of the Attorney General, the Superintendent of Public Instruction, and the State Treasurer. Neither Section 11A nor related sections specifies any timetable for the Apportionment Commission to file its order of apportionment. The Oklahoma Constitution did not contemplate adjustments to census data after their submission by the Department of Commerce to the President. In Section 3 of H.B. 1001, by which redistricting of the Oklahoma House of Representatives was accomplished, the legislature declared its intent in light of possible adjustment:

> SECTION 3. For purposes of compliance with Section 11A of Article 5 of the Oklahoma Constitution requiring apportionment within ninety (90) legislative days after the convening of the First Regular Session of the Legislature following each Federal Decennial Census, the Legislature declares, pursuant to this act, that the Legislature has accomplished the apportionment of the State House of Representatives within the required time following the submission by the United States Department of Commerce to the President of the 1990 decennial census population counts on December 26, 1990. Such counts, however, were transmitted with a caveat that the counts were subject to possible corrections for undercount or overcount by the United States Department of Commerce. Therefore, it is the intent of the Oklahoma Legislature that should an adjustment of the population counts for Oklahoma occur, the Oklahoma Legislature reserves the right to revise, if necessary, the apportionment of the State House of Representatives provided by this act to ensure substantive equality of population among the districts.

However, there is no precedent of which I am aware by which we can know for certain whether the legislative apportionment accomplished in 1991 would satisfy the constitutional requirements of Article V, § 11A, despite the legislative declaration of intent. In my opinion, statistical adjustment of the census data would in all probability result in litigation in Oklahoma regarding who has authority to redo the reapportionment using adjusted data or whether the officials elected pursuant to the 1991 plans were elected pursuant to valid plans. A statistical adjustment would, in all probability, subject the Oklahoma congressional apportionment plan to litigation. The adjustment would create inequalities in district populations that would make the 1991 plan subject to a court challenge

if an alternative plan could be presented to a court with lower population variations.

/s/ George G. Humphreys
GEORGE G. HUMPHREYS

[Notary Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 94-1614

WISCONSIN, PETITIONER

v.

CITY OF NEW YORK, ET AL.

ORDER ALLOWING CERTIORARI

Filed September 27, 1995

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. This case is consolidated with 94-1631, *Oklahoma v. City of New York, et al.* and 94-1985, *Department of Commerce, et al. v. City of New York, et al.* and a total of one hour is allotted for oral argument. The briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 9, 1995. The briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 8, 1995. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 28, 1995. Rule 29.2 does not apply.

September 27, 1995

SUPREME COURT OF THE UNITED STATES

No. 94-1631

OKLAHOMA, PETITIONER

v.

CITY OF NEW YORK, ET AL.

ORDER ALLOWING CERTIORARI

Filed September 27, 1995

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. This case is consolidated with 94-1614, *Wisconsin v. City of New York, et al.* and 94-1985, *Department of Commerce, et al. v. City of New York, et al.* and a total of one hour is allotted for oral argument. The briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 9, 1995. The briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 8, 1995. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 28, 1995. Rule 29.2 does not apply.

September 27, 1995

SUPREME COURT OF THE UNITED STATES

No. 94-1985

DEPARTMENT OF COMMERCE, ET AL., PETITIONERS

v.

CITY OF NEW YORK, ET AL.

ORDER ALLOWING CERTIORARI

Filed September 27, 1995

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. This case is consolidated with 94-1614, *Wisconsin v. City of New York, et al.* and 94-1631, *Oklahoma v. City of New York, et al.* and a total of one hour is allotted for oral argument. The briefs of petitioners are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, November 9, 1995. The briefs of respondents are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, December 8, 1995. Reply briefs, if any, are to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 28, 1995. Rule 29.2 does not apply.

September 27, 1995

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